# PHILIPPINE REPORTS

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**VOLUME 790**

# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

JULY 13, 2016 TO JULY 20, 2016

SUPREME COURT
MANILA
2017

*Prepared*
*by*

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Manila
2017

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# REPORT OF CASES

DETERMINED IN THE

## SUPREME COURT OF THE PHILIPPINES

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### FIRST DIVISION

[G.R. No. 180060. July 13, 2016]

**SPOUSES AUGUSTO and NORA NAVARRO,** *petitioners, vs.* **RURAL BANK OF TARLAC, INC.,** *respondent.*

### SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; AN APPEAL MADE UNDER RULE 41 OF THE RULES OF COURT RAISING ONLY PURE QUESTIONS OF LAW SHALL BE DISMISSED OUTRIGHT; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.—** Section 2, Rule 50 of the Rules of Court, clearly mandates the outright dismissal of appeals made under Rule 41 thereof, if they only raise pure questions of law. x x x There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or an evaluation of the truth or falsity of the facts admitted. Here, the doubt revolves around the correct application of law and jurisprudence on a certain set of facts or circumstances. The test for ascertaining whether a question is one of law is to determine if the appellate court can resolve the issues without reviewing or evaluating the evidence. Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is considered a question of law. Conversely, there is a question of fact when doubt or controversy arises as to the truth or falsity of the alleged information or facts; the credibility of the witnesses; or the relevance of surrounding circumstances and their relationship to each other.

2. **ID.; ID.; ID.; THE DETERMINATION OF WHETHER AN APPEAL INVOLVES ONLY QUESTIONS OF LAW OR BOTH LAW AND FACT IS BEST LEFT TO THE COURT OF APPEALS.—** [I]t is a settled rule that the determination of whether an appeal involves only questions of law or of both law and fact is best left to the CA, and that all doubts as to the correctness of its conclusions shall be resolved in its favor. We have nevertheless reviewed its determination and found no reason to disturb its finding that petitioners only raised pure questions of law in their ordinary appeal before it. The CA did not commit any reversible error when it dismissed Spouses Navarro's appeal outright.

**APPEARANCES OF COUNSEL**

*Concepcion Law Office* for petitioners.
*Mariemeir I. Marcos-Rivera* for respondent.

## D E C I S I O N

**SERENO, *C.J.*:**

The case before this Court concerns the availability of the remedy of an ordinary appeal under Rule 41 of the Rules of Court[1] in challenging the decision of the Regional Trial Court (RTC)[2] to resolve a case by way of a summary judgment. The Court of Appeals (CA) dismissed[3] the appeal outright in light of Section 2, Rule 50 of the Rules of Court. The provision directs the dismissal of appeals filed through Rule 41 if they

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[1] Petition for Review on *Certiorari*, pp. 9-10, *rollo*, pp. 16-17.

[2] The Tarlac City (Br. 63) Regional Trial Court Decision in Civil Case No. 9381 was penned by Judge Arsenio P. Adriano. RTC Decision, CA *rollo*, pp. 19-21.

[3] The Court of Appeals Decision dated 27 December 2006 and Resolution dated 03 October 2007 in CA-G.R. CV No. 80041 were penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Andres B. Reyes, Jr. and Hakim S. Abdulwahid. *See* CA Decision, *rollo*, pp. 20-31; CA Resolution, *rollo*, pp. 32-33.

merely raise pure questions of law. Spouses Augusto and Nora Navarro now come before this Court arguing that their appeal should not have been dismissed, since the issues they raised included questions of fact.

## FACTS

This petition stems from the complaint for a sum of money filed by the Rural Bank of Tarlac, Inc., against Spouses Navarro. It is undisputed that petitioners obtained a bank loan in the amount of ₱558,000 for the purchase of a motor vehicle, and that they were unable to complete the agreed monthly installments. It is also uncontested that they surrendered their vehicle (a 1998 Kia Advantage van) to the bank, so that the latter could sell it and apply the proceeds of the sale to their obligations.[4] The parties, however, disagreed as to the effect of the surrender of the vehicle under that circumstance.

According to the bank, petitioners still had an unpaid balance of ₱315,677.80 excluding interests, penalties, and liquidated damages even after the sale of the van.[5] It claimed that their monthly installments amounted to only ₱92,322.20,[6] while it was able to sell the vehicle for only ₱150,000.00.[7] Thus, it alleged that it could only credit the total amount of ₱242,322.20 in their favor.[8]

Spouses Navarro did not deny that they had executed a Promissory Note in favor of the bank, and that the terms were

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[4] *See* Petition for Review on *Certiorari*, pp. 2-3, *rollo*, pp. 9-10; Appellants' Brief, p. 2, CA *rollo*, p. 11; Answer with Counterclaim of Spouses Navarro, RTC Records, pp. 17-19; Motion for Summary Judgment of Rural Bank of Tarlac, RTC Records, pp. 20-27.

[5] Motion for Summary Judgment of Rural Bank of Tarlac, RTC records, pp. 20-27. According to the bank, petitioners' obligation would amount to ₱494,707.66 if interests, penalties, and liquidated damages are computed.

[6] Motion for Summary Judgment of Rural Bank of Tarlac, RTC records, pp. 20-27. *See* RTC Decision, p. 1; CA *rollo*, p. 19.

[7] *Id.*

[8] *Id.*

correctly reflected in the note.[9] They claim, however, that when they surrendered the vehicle, they understood that it would serve as complete satisfaction of their remaining loan obligation by way of a *dacion en pago*.

In view of the spouses' Answer, the bank filed a Motion for Summary Judgment under Section 1, Rule 35 of the Rules of Court.[10] It alleged that the only issue before the trial court was whether the selling price of the vehicle was enough to satisfy the unpaid balance, interest, and other charges. It argued that a summary judgment was proper, since there was no more genuine issue relating to any material fact, and that the matter before the court was merely the computation of the remaining balance. To support its motion, the bank presented the Promissory Note executed by the spouses for the amount of ₱558,000,[11] as well as the receipts for the sale of the vehicle to a certain Corazon Quesada for ₱150,000;[12] and acknowledged the spouses' total monthly installments of ₱92,322.20.[13] Based on its own accounting,[14] the total payments amounted to ₱242,322.20, while their total running balance was ₱315,677.80 excluding interests, penalties, and liquidated damages.

Spouses Navarro opposed the motion.[15] While they did not assail the amount for which the van was sold, they nevertheless

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[9] Answer with Counterclaim of Spouses Navarro, RTC records, pp. 17-19.

[10] Motion for Summary Judgment of Rural Bank of Tarlac, RTC records, pp. 20-27.

[11] Annex "A" of the Complaint of Rural Bank of Tarlac, RTC records, p. 4.

[12] Receipts, Annexes "B" and "B-1" attached to the Motion for Summary Judgment of Rural Bank of Tarlac, RTC records, p. 25.

[13] Motion for Summary Judgment of Rural Bank of Tarlac, RTC Records, pp. 20-27. *See* RTC Decision, p. 1, CA *rollo*, p. 19.

[14] Annex "C" of the Motion for Summary Judgment of Rural Bank of Tarlac, RTC Records, p. 26.

[15] Comment/Opposition to Plaintiff's Motion for Summary Judgment, RTC Records, pp. 31-34.

asserted that by surrendering the vehicle, their remaining obligation must be deemed to have been fully paid. To prove their assertion, they presented an acknowledgment receipt, which stated that the bank had "[r]eceived x x x one unit *KIA ADVANTAGE VAN*, in good and running condition."[16] They argued that there still existed a question of fact, since there must be a proper accounting of their correct balance. In the alternative, they averred that the deductible amount for the sale of the van must be based on its value at the time they surrendered it to the bank. They also claimed that their monthly installments had already amounted to ₱161,137.69. The spouses, however, did not attach receipts or any other kind of evidence to support this contention.

By way of a summary judgment, the RTC rendered a Decision[17] in favor of the bank. It explained that Spouses Navarro remained obligated to pay the remaining principal loan amount of ₱315,677.80 plus legal interest and attorney's fees.[18] The trial court ruled:[19]

> Defendants claimed they had paid the sum of ₱161,137.69 as of March 18, 2002, and had in fact surrendered one Kia Van by way of "dacion en pago" thereby extinguishing the obligation.
>
> If the intention of parties is to consider the surrender of the Kia Van as full payment, a receipt to that effect should have been signed or acknowledged by the bank. There was none. Further, it is the burden of defendants to prove that their payments to the bank amounted to ₱161,137.69 as of March 18, 2002, which should be evidenced by receipts of payment to the bank.

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[16] Receipt dated 20 May 2002, Annex "I" of Spouses Navarro's Comment/ Opposition to Plaintiff's Motion for Summary Judgment, RTC Records, p. 34.

[17] The Decision dated 03 July 2003 issued by the Tarlac City Regional Trial Court (Br. 63) in Civil Case No. 9381 was penned by Judge Arsenio P. Adriano. CA *rollo*, pp. 19-21.

[18] CA Decision, pp. 3-4, *rollo*, pp. 22-23.

[19] RTC Decision, CA *rollo*, pp. 19-21.

Thus, the Court finds that the motion for summary judgment is proper. The Court agrees that the obligation of the defendants or the principal balance is ₱315,677.80. However, the interest of 32% per annum, the 12% penalty and 12% liquidated damages, all totaling 56% plus 25% attorney's fees may be [unconscionable], as the charges amounted to 81% of the principal balance. The Court has to [reduce] this x x x. The legal rate of 12% per annum should be applied in this case, which should be computed from December 7, 2002 on the balance of the principal amount which was ₱315,677.80. The computation should be —

₱315,677.80 x 1% (per month) x eight months from December 2002 up to July, 2003)

= total interest due or ₱25,244.16

Thus, the total amount to be paid is computed in this manner —

| | |
|---|---:|
| | ₱315,677.80 |
| Plus | 25,244.16 |
| | ₱340,921.96 |

Plaintiff is entitled to a reasonable sum of ₱5,000.00 as attorney's fees, there being a stipulation in the contract.

Petitioners assailed the trial court's Decision by filing an ordinary appeal under Rule 41 of the Rules of Court[20] and assigning the following errors:[21]

I. The lower court erred in finding that summary judgment is proper.

II. The lower court erred in rendering summary judgment when there existed genuine triable issues.

III. The lower court erred in not conducting a hearing to find out that defendant's obligation had already been extinguished.

IV. The lower court erred in awarding to plaintiff attorney's fees and costs.

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[20] *See* Motion for Reconsideration of Petitioner before the CA, CA *rollo*, pp. 59-63.

[21] CA Decision, p. 5, *rollo*, p. 24; Appellants' Brief, p. 1, CA *rollo*, p. 10.

Spouses Navarro claimed[22] that a factual controversy still existed concerning their remaining indebtedness. They maintained that the conveyance of their motor vehicle already served to offset the claims of the bank by means of *dacion en pago*. In any event, they averred that it could have simply made a deficiency claim against them if the amount derived from the sale of the vehicle was found insufficient. Consequently, they insisted that the RTC should not have granted the bank's Motion for Summary Judgment, since there was still a need to hold a trial to ascertain the amount of the unpaid balance. With regard to the last issue, petitioners argued that the RTC erred in ordering them to pay attorney's fees and costs of suit. They pointed out that there was no basis for the grant, since there was no trial.

The CA dismissed the appeal outright, because petitioners availed themselves of the wrong remedy. It held that the supposed errors of the RTC revolved around the propriety of resolving the case through a summary judgment.[23] According to the appellate court, since these issues involved pure questions of law, the proper remedy to assail the judgment was to file a petition under Section 1, Rule 45 of the Rules of Court, instead of an ordinary appeal under Section 2, Rule 41 thereof.

Spouses Navarro are now before this Court through a Petition for Review under Rule 45. They insist[24] that the CA needed to resolve issues involving questions of fact, and that the determination of whether their obligations have already been extinguished requires a full-blown trial. They also argue that the issue relating to the award of attorney's fees and costs of suit involves questions of fact.

**ISSUE**

The issue to be resolved by the Court is whether Spouses Navarro resorted to the wrong remedy of filing an ordinary

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[22] Appellants' Brief, CA *rollo*, pp. 7-17.

[23] *Rollo*, pp. 24-25.

[24] Reply to Comment, pp. 1-2, *rollo*, pp. 52-53.

appeal under Rule 41, instead of a petition under Rule 45 of the Rules of Court, when they questioned the correctness of the decision of the RTC to resolve the dispute through a summary judgment before the CA.

**RULING**

The petition is unmeritorious.

Section 2, Rule 50 of the Rules of Court, clearly mandates the outright dismissal of appeals made under Rule 41 thereof, if they only raise pure questions of law.[25] The pertinent provision of Rule 50 reads as follows:

SECTION 2. *Dismissal of improper appeal to the Court of Appeals.* — **An appeal under Rule 41** taken from the Regional Trial Court to the Court of Appeals **raising only questions of law shall be dismissed**, issues purely of law **not being reviewable by said court**. Similarly, an appeal by notice of appeal instead of by petition for review from the appellate judgment of a Regional Trial Court shall be dismissed.

**An appeal erroneously taken to the Court of Appeals shall not be transferred to the appropriate court but shall be dismissed outright.** (Emphases supplied)

There is a question of law when the issue does not call for an examination of the probative value of the evidence presented or an evaluation of the truth or falsity of the facts admitted.[26] Here, the doubt revolves around the correct application of law and jurisprudence on a certain set of facts or circumstances.[27] The test for ascertaining whether a question is one of law is to

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[25] See *Heirs of Cabigas v. Limbaco*, 670 Phil. 274 (2011).

[26] *Heirs of Cabigas v. Limbaco*, 670 Phil. 274 (2011*); St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City*, 596 Phil. 778 (2009); *National Power Corporation v. Purefoods Corporation*, 586 Phil. 587 (2008*); First Bancorp, Inc. v. Court of Appeals*, 525 Phil. 309 (2006); *China Road and Bridge Corporation v. Court of Appeals,* 401 Phil. 590 (2000).

[27] *Bases Conversion Development Authority v. Reyes*, G.R. No. 194247, 19 June 2013, 699 SCRA 217.

determine if the appellate court can resolve the issues without reviewing or evaluating the evidence.[28] Where there is no dispute as to the facts, the question of whether or not the conclusions drawn from these facts are correct is considered a question of law.[29] Conversely, there is a question of fact when doubt or controversy arises as to the truth or falsity of the alleged information or facts; the credibility of the witnesses; or the relevance of surrounding circumstances and their relationship to each other.[30]

Applying the above definition and test to the instant case, it is apparent that petitioners raised pure questions of law in their ordinary appeal under Rule 41. From the Appellants' Brief[31] filed by Spouses Navarro — *vis-à-vis* their Answer with Counterclaim[32] and Comment/Opposition to Plaintiff's Motion for Summary Judgment[33] before the RTC — and even from their Petition for Review on Certiorari[34] before this Court, it is clear that the crux of their appeal to the CA is the supposed erroneous conclusions drawn by the trial court from the already uncontested facts before the latter. These uncontested or uncontroverted facts are as follows:

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[28] *Id.*; *Rivera v. United Laboratories, Inc.,* 604 Phil. 184 (2009*); Central Bank of the Philippines v. Castro,* 514 Phil. 425 (2005); *Cucueco v. Court of Appeals*, 484 Phil. 254, 265 (2004*); China Road and Bridge Corporation v. Court of Appeals, supra* note 26.

[29] *Bases Conversion Development Authority v. Reyes, supra; Cucueco v. Court of Appeals*, 484 Phil. 254 (2004).

[30] *Bases Conversion Development Authority v. Reyes, supra; Heirs of Nicolas S. Cabigas v. Limbaco, supra* note 26; *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City, supra* note 26; *National Power Corporation v. Purefoods Corporation, supra* note 26; *First Bancorp, Inc. v. Court of Appeals, supra* note 26; *China Road and Bridge Corporation v. Court of Appeals, supra* note 26.

[31] Appellants' Brief, CA *rollo*, pp. 7-17.

[32] RTC Records, pp. 17-19.

[33] *Id.* at 31-32.

[34] Petition for Review on *Certiorari*, *rollo*, pp. 8-19.

1. Petitioners obtained a loan from the bank in the amount of ₱558,000, and the terms of the loan were accurately reflected in the Promissory Note attached to respondent's complaint.[35]

2. The bank admitted that petitioners had already paid ₱92,322.20 as loan amortization.[36]

3. Petitioners surrendered the vehicle to the bank, so that the latter would be able to sell it and apply the proceeds to their loan obligation.

4. The only written agreement pertaining to the surrender of the vehicle was the acknowledgment receipt, which stated that the bank "[r]eceived from *MR. AUGUSTO G. NAVARRO* of Barangay Sto. Domingo II Capas, Tarlac (1) one unit *KIA ADVANTAGE VAN*, in good and running condition."[37]

5. The van was sold for only ₱150,000 three months after it was surrendered.[38]

It may appear that there is still a factual issue concerning the total amount of installment payments made by petitioners. However, they have already been given numerous opportunities to present evidence that they actually paid ₱161,137.69, or ₱68,815.49 more than the amount the bank admitted receiving. We stress that their assertion of the amount paid is an affirmative defense under Section 5 (b), Rule 6 of the Rules of Court,[39]

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[35] Answer with Counterclaim of Spouses Navarro, RTC Records, p. 17.

[36] Motion for Summary Judgment of Rural Bank of Tarlac, RTC records, pp. 20-27. *See* RTC Decision, p. 1; CA *rollo*, p. 19.

[37] Receipt dated 20 May 2002, Annex "1" of Spouses Navarro's Comment/ Opposition to Plaintiff's Motion for Summary Judgment, RTC Records, p. 34.

[38] Receipts, Annexes "B" and "B-1" attached to the Motion for Summary Judgment of Rural Bank of Tarlac, RTC records, p. 25.

[39] According to this provision, "An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery

which they have the burden to substantiate.[40] In turn, Section 7, Rule 8 thereof, provides that whenever a "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 x x x."

We have perused the records of this case and found nothing attached or referenced that would evidence additional payment in the amount of ₱68,815.49. Spouses Navarro failed to take advantage of the clear opportunities to prove payment in their Answer with Counterclaim[41] and Comment/Opposition to Plaintiff's Motion for Summary Judgment[42] before the RTC; their Appellants' Brief[43] and Motion for Reconsideration[44] before the CA; and even their Petition for Review on Certiorari,[45] Reply to Comment,[46] and Memorandum[47] before this Court. Consequently, the CA cannot be deemed to have committed a reversible error in affirming the RTC decision to uphold the interest of judicial economy and render a summary judgment, especially in the face of petitioners' bare allegations.

We also note that petitioners did not seek to present any additional piece of evidence that would substantiate their claim

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by him. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance."

[40] *Phil. Commercial International Bank v. Franco*, G.R. No. 180069, 5 March 2014; *Bank of the Philippine Islands v. Spouses Royeca*, 581 Phil. 188 (2008); *Jimenez v. National Labor Relations Commission*, 326 Phil. 89 (1996).

[41] RTC Records, pp. 17-19.

[42] RTC Records, pp. 31-34.

[43] Appellants' Brief, CA *rollo*, pp. 7-17.

[44] Appellants' Motion for Reconsideration, CA *rollo*, pp. 59-63.

[45] Petition for Review on *Certiorari*, *rollo*, pp. 8-19.

[46] Reply to Comment, *rollo*, pp. 52-55.

[47] Memorandum, *rollo*, pp. 62-72.

of a *dacion en pago* agreement with respect to the surrender of the Kia Advantage van. Neither did they present before the RTC any basis for their assertion that a different valuation must be used for the sale of the van. Instead, they eventually asked the trial court to consider the conveyance of the vehicle as full payment of their loan obligation or, in the alternative, that it order the bank to render an accounting to establish the correct loan balances.[48] They argued before the CA in this wise:[49]

An examination of the pleadings, documents and affidavits on file immediately reveal that there is controversy as to the claim of the plaintiff that the defendants are still indebted to it for the sum of ₱315,677.80, plus interests, penalty charge, liquidated damages and attorney's fees when the obligation has already been fully extinguished with a *Dacion En Pago* over a motor vehicle conveyed to the plaintiff. And even assuming, but without admitting that defendant still owed the plaintiff, the same would just be one for deficiency claim with the total payments made and actual value of the motor vehicle conveyed set off against total bank claims, so that, in such case, an accounting is first needed to establish the correct balances thereon and the lack or absence thereof necessarily renders plaintiff's action premature. These contentious issues necessarily entail the presentation of evidence.

Moreover, the Answer specifically denied the material allegations of the complaint on defendants' default, refusal to pay their obligation that included interest, penalty charges, liquidated damages and attorney's fees.

The only way to ascertain the truth is obviously through the presentation of evidence by the parties. Summary judgment is not proper where the defendant presented defenses tendering factual issues which call for the presentation of evidence as where the defendant specifically denied the material allegations in the complaint.

Thus, there are issues of facts pleaded and disputed rendering the case unripe for a summary judgment. The Honorable Court should try the case on the merits. Until such time as the trial on the merits

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[48] Spouses Navarro's Comment/Opposition to Plaintiff's Motion for Summary Judgment, RTC Records, p. 32.

[49] Appellants' Brief, CA *rollo*, pp. 13-15.

of the case is done, it would be PREMATURE on the part of the Court to render judgment on the case without learing the parties on the merits of their respective sides.

The lower court said in its decision that "if the intention of the parties is to consider the surrender of the Kia Van as full payment, a receipt to that effect should have been signed or acknowledged by the bank. There was none." It must be noted that the Answer alleges "bad faith" and abuse of rights against the plaintiff ["in filing this case for collection when defendants' obligation with it had already been extinguished"].[50] It should hear and try the case because by the testimony and other evidences to be presented, the court would be informed of the reason why there was no such receipt and why the entire obligation has already been extinguished.

Defendant Augusto Navarro declared in his Affidavit that they "were compelled to surrender the financed Kia Van upon an agreement forged with us by the bank that the surrender of said vehicle (will) fully pay and extinguish our obligation"; that "in consideration of our said agreement, the bank made us to sign IN BLANK a deed of sale over the same motor vehicle to leave to the bank full authority and control to dictate the price thereof; which price, were made to believe and understand, will apply to the full payment and extinguishment of our said obligation."

To support this claim of defendant Augusto Navarro is plaintiff's own exhibit which appears to be the "Deed of Sale" mentioned by said defendant.

Now, would the court be truly justified in rendering a summary judgment when by the appearance of what is before it, it is bound by the dictates of justice and fair play to look into the transaction so it could inform itself as to who among the plaintiff and the defendants are telling the truth? From where we stand, it is very clear that, contrary to the finding of the lower court, the rendition of a summary judgment in this case is not proper. There should be a trial to ferret out the truth.

Besides the lower court itself stated that "it is the burden of defendants to prove that their payments to the bank amounted to ₱161,137.69 as of March 18, 2002, which would be evidenced by receipts of payments to the bank." Verily, if one party has the burden

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[50] Answer with Counterclaim of Spouses Navarro, RTC Records, p. 18.

of proof, necessarily he is under obligation to present such proof. So how can one present the proof required of him when he is denied the opportunity to present the same? In effect, such denial is a negation of one's right to be heard and to due process. Under our Constitution, no person shall be deprived of life, liberty or property without due process of law.

From the circumstances availing, there is really a very serious doubt as to the propriety of the summary judgment. In case of such doubt, the doubt shall be resolved against the moving party. The court should take that view of evidence most favorable to the party against whom it is directed and give that party the benefit of all favorable inferences. (Citations omitted, emphases supplied)

Clearly, these matters do not entail a review of the facts or an evaluation of the probative value of the evidence. The CA was only required to examine if the admitted facts in the pleadings and the affidavits filed by the movant warranted the trial court's conclusions on the applicable law. The only factual issue petitioners attempted to tender was the claim that they paid more than what the bank claimed as total monthly installments. But even on this point, they failed to introduce any acceptable evidentiary reference.

The same reasoning applies to the question relating to the payment of attorney's fees and costs of suit. Petitioners' own arguments show that this question is, in the first place, dependent on the resolution of the issue of the propriety of a summary judgment. It is undisputed that the loan agreement between the parties provided for the award of attorney's fees in favor of the bank, in case it would be forced to file a collection suit.[51] On the other hand, Section 1, Rule 142 of the Rules of Court, clearly states that the payment of the costs of suit "shall be allowed to the prevailing party as a matter of course."[52] Therefore, the

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[51] RTC Decision, p. 3, CA *rollo*, p. 21; Promissory Note, Annex "A" of Complaint, RTC Records, p. 8. *See* CIVIL CODE, Art. 2208.

[52] See also: *Star Electric Corp. v. R & G Construction Development and Trading, Inc.,* G.R. No. 212058, 07 December 2015; *Mendoza v. Spouses Gomez,* G.R. No. 160110, 18 June 2014, 726 SCRA 505; *F.F. Cruz & Co.,*

CA only needed to determine if the lower court properly applied the provisions of the loan agreement, the law, the Rules of Court, and jurisprudence to the award of attorney's fees and costs of suit.

Indeed, it is a settled rule[53] that the determination of whether an appeal involves only questions of law or of both law and fact is best left to the CA, and that all doubts as to the correctness of its conclusions shall be resolved in its favor. We have nevertheless reviewed its determination and found no reason to disturb its finding that petitioners only raised pure questions of law in their ordinary appeal before it. The CA did not commit any reversible error when it dismissed Spouses Navarro's appeal outright.

**WHEREFORE,** premises considered, the instant Petition is **DENIED**. The Court of Appeals Decision dated 27 December 2006 and Resolution dated 3 October 2007, which outrightly dismissed the ordinary appeal taken by petitioners in CA-G.R. CV No. 80041, are hereby **AFFIRMED**.

**SO ORDERED.**

*Leonardo-de Castro, Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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*Inc. v. HR Construction Corp.*, 684 Phil. 330 (2012*); Land Bank of the Phils. v. Rivera*, 649 Phil. 575 (2010).

[53] *Heirs of Nicolas S. Cabigas v. Limbaco*, *supra* note 26*; St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City, supra* note 26; *National Power Corporation v. Purefoods Corporation, supra* note 26; *First Bancorp, Inc. v. Court of Appeals*, *supra* note 26; *China Road and Bridge Corporation v. Court of Appeals*, *supra* note 26; *Philippine National Bank v. Romillo*, 223 Phil. 533 (1985).

**THIRD DIVISION**

[G.R. No. 181375. July 13, 2016]

**PHIL-NIPPON KYOEI, CORP.,** *petitioner, vs.* **ROSALIA T. GUDELOSAO, on her behalf and in behalf of minor children CHRISTY MAE T. GUDELOSAO and ROSE ELDEN T. GUDELOSAO, CARMEN TANCONTIAN, on her behalf and in behalf of the children CAMELA B. TANCONTIAN, BEVERLY B. TANCONTIAN, and ACE B. TANCONTIAN,** *respondents.*

**SYLLABUS**

1. **MERCANTILE LAW; MARITIME LAW; CODE OF COMMERCE; LIMITED LIABILITY RULE; WHEN INAPPLICABLE.—** In this jurisdiction, the limited liability rule is embodied in Articles 587, 590 and 837 under Book III of the Code of Commerce x x x. Article 837 applies the limited liability rule in cases of collision. Meanwhile, Articles 587 and 590 embody the universal principle of limited liability in all cases wherein the shipowner or agent may be properly held liable for the negligent or illicit acts of the captain. These articles precisely intend to limit the liability of the shipowner or agent to the value of the vessel, its appurtenances and freightage earned in the voyage, provided that the owner or agent abandons the vessel. When the vessel is totally lost, in which case abandonment is not required because there is no vessel to abandon, the liability of the shipowner or agent for damages is extinguished. Nonetheless, the limited liability rule is not absolute and is without exceptions. It does not apply in cases: (1) where the injury or death to a passenger is due either to the fault of the shipowner, or to the concurring negligence of the shipowner and the captain; (2) where the vessel is insured; and (3) **in workmen's compensation claims**. In *Abueg v. San Diego*, we ruled that the limited liability rule found in the Code of Commerce is inapplicable in a liability created by statute to compensate employees and laborers, or the heirs and dependents, in cases of injury received by or inflicted upon them while engaged in the performance of their work or employment x x x.

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); DEATH BENEFITS; THE CLAIM OF DEATH BENEFITS UNDER THE POEA-SEC IS THE SAME SPECIES AS THE WORKMEN'S COMPENSATION CLAIMS UNDER THE LABOR CODE, AND BOTH OF WHICH BELONG TO A DIFFERENT REALM FROM THAT OF MARITIME LAW, RENDERING THE LIMITED LIABILITY RULE INAPPLICABLE TO LIABILITIES UNDER POEA-SEC.—** Akin to the death benefits under the Labor Code, these benefits under the POEA-SEC are given when the employee dies due to a work-related cause during the term of his contract. The liability of the shipowner or agent under the POEA-SEC has likewise nothing to do with the provisions of the Code of Commerce regarding maritime commerce. The death benefits granted under the POEA-SEC is not due to the death of a passenger by or through the misconduct of the captain or master of the ship; nor is it the liability for the loss of the ship as a result of a collision; nor the liability for wages of the crew. It is a liability created by contract between the seafarers and their employers, but secured through the State's intervention as a matter of constitutional and statutory duty to protect Filipino overseas workers and to secure for them the best terms and conditions possible, in order to compensate the seafarers' heirs and dependents in the event of death while engaged in the performance of their work or employment. The POEA-SEC prescribes the set of standard provisions established and implemented by the POEA containing the minimum requirements prescribed by the government for the employment of Filipino seafarers. While it is contractual in nature, the POEA-SEC is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels. As such, it is deemed incorporated in every Filipino seafarers' contract of employment. It is established pursuant to POEA's power "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and "to protect the well-being of Filipino workers overseas" pursuant to Article 17 of the Labor Code as amended by Executive Order (EO) Nos. 797 and 247. But while the nature of death benefits under the Labor

Code and the POEA-SEC are similar, the death benefits under the POEA-SEC are intended to be separate and distinct from, and in addition to, whatever benefits the seafarer is entitled to under Philippine laws, including those benefits which may be claimed from the State Insurance Fund. Thus, the claim for death benefits under the POEA-SEC is the same species as the workmen's compensation claims under the Labor Code — both of which belong to a different realm from that of Maritime Law. Therefore, the limited liability rule does not apply to petitioner's liability under the POEA-SEC.

3. **ID.; ID.; ID.; ID.; ID.; THE PRINCIPAL/EMPLOYER IS SOLIDARILY LIABLE WITH THE RECRUITMENT/ PLACEMENT AGENCY FOR ALL CLAIMS AND LIABILITIES, AND THE RELEASE OF ONE OF THE SOLIDARY DEBTORS REDOUNDS TO THE BENEFIT OF THE OTHER.—** [T]he Release and Quitclaim executed between TEMMPC, TMCL and Capt. Oscar Orbeta, and respondents redounded to the benefit of petitioner as a solidary debtor. Petitioner is solidarily liable with TEMMPC and TMCL for the death benefits under the POEA-SEC. The basis of the solidary liability of the principal with the local manning agent is found in the second paragraph of Section 10 of the Migrant Workers and Overseas Filipino Act of 1995, which, in part, provides: "[t]he liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several." This provision, is in turn, implemented by Section 1 (e)(8), Rule 2, Part II of the POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, which requires the undertaking of the manning agency to "[a]ssume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the employment contract [and POEA-SEC]." We have consistently applied the Civil Code provisions on solidary obligations, specifically Articles 1217 and 1222, to labor cases. We explained *in Varorient Shipping Co., Inc. v. NLRC* the nature of the solidary liability in labor cases x x x. [T]he rule is that the release of one solidary debtor redounds to the benefit of the others. Considering that petitioner is solidarily liable with TEMMPC and TMCL, we hold that the Release and Quitclaim executed by respondents in favor of TEMMPC and TMCL redounded to petitioner's benefit. Accordingly, the liabilities of petitioner

under Section 20(A)(1) and (4)(c) of the POEA-SEC to respondents are now deemed extinguished. We emphasize, however, that this pronouncement does not foreclose the right of reimbursement of the solidary debtors who paid (*i.e.*, TEMMPC and TMCL) from petitioner as their co-debtor.

4. **ID.; ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION; HAS JURISDICTION OVER CLAIMS ARISING OUT OF AN EMPLOYER-EMPLOYEE RELATIONSHIP OR BY VIRTUE OF ANY LAW OR CONTRACT INVOLVING FILIPINO WORKERS OR OVERSEAS DEPLOYMENT.—** We find that the CA correctly upheld the NLRC's jurisdiction to order SSSICI to pay respondents the value of the proceeds of the Personal Accident Policies. The Migrant Workers and Overseas Filipinos Act of 1995 gives the Labor Arbiters of the NLRC the original and exclusive jurisdiction over claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damage. It further creates a joint and several liability among the principal or employer, and the recruitment/placement agency, for any and all claims involving Filipino workers x x x. In *Finman General Assurance Corp. v. Inocencio*, we upheld the jurisdiction of the POEA to determine a surety's liability under its bond. We ruled that the adjudicatory power to do so is not vested with the Insurance Commission exclusively. The POEA (now the NLRC) is vested with quasi-judicial powers over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment. Here, the award of the insurance proceeds arose out of the personal accident insurance procured by petitioner as the local principal over the deceased seafarers who were Filipino overseas workers. The premiums paid by petitioner were, in actuality, part of the total compensation paid for the services of the crewmembers. Put differently, the labor of the employees is the true source of the benefits which are a form of additional compensation to them. Undeniably, such claim on the personal accident cover is a claim under an insurance contract *involving Filipino workers for overseas deployment* within the jurisdiction of the NLRC. It must also be noted that the amendment under Section 37-A of the Migrant Workers and Overseas Filipinos Act of 1995 on

Compulsory Insurance Coverage does not apply. The amendment requires the claimant to bring any question or dispute in the enforcement of any insurance policy before the Insurance Commission for mediation or adjudication. The amendment, however, took effect on May 8, 2010 long after the Personal Accident Policies in this case were procured in 2003. Accordingly, the NLRC has jurisdiction over the claim for proceeds under the Personal Accident Policies.

5. **ID.; INSURANCE LAW; INSURANCE CODE; CASUALTY INSURANCE; LIABILITY INSURANCE; THE INSURER ASSUMES THE OBLIGATION TO PAY THIRD PARTY IN WHOSE FAVOR THE LIABILITY OF THE INSURED ARISES.—** We rule that while the Personal Accident Policies are casualty insurance, they do not answer for petitioner's liabilities arising from the sinking of the vessel. It is an indemnity insurance procured by petitioner for the benefit of the seafarers. As a result, petitioner is not directly liable to pay under the policies because it is merely the policyholder of the Personal Accident Policies. Section 176 (formerly Sec. 174) of The Insurance Code defines casualty insurance x x x. Based on Section 176, casualty insurance may cover liability or loss arising from accident or mishap. In a liability insurance, the insurer assumes the obligation to pay third party in whose favor the liability of the insured arises. On the other hand, personal accident insurance refers to insurance against death or injury by accident or accidental means. In an accidental death policy, the accident causing the death is the thing insured against. x x x SSSICI admitted that the crewmembers of MV Mahlia are insured for the amount of ₱3,240,000.00, payable upon the accidental death of the crewmembers. It further admitted that the insured risk is the loss of life or bodily injury brought about by the violent external event or accidental means. Based on the foregoing, the insurer itself admits that what is being insured against is not the liability of the shipowner for death or injuries to passengers but the death of the seafarers arising from accident. The liability of SSSICI to the beneficiaries is direct under the insurance contract. Under the contract, petitioner is the policyholder, with SSSICI as the insurer, the crewmembers as the *cestui que vie* or the person whose life is being insured with another as beneficiary of the proceeds, and the latter's heirs as beneficiaries of the policies. Upon petitioner's payment of the premiums intended as additional compensation

to the crewmembers, SSSICI as insurer undertook to indemnify the crewmembers' beneficiaries from an unknown or contingent event. Thus, when the CA conditioned the extinguishment of petitioner's liability on SSSICI's payment of the Personal Accident Policies' proceeds, it made a finding that petitioner is subsidiarily liable for the face value of the policies. To reiterate, however, there is no basis for such finding; there is no obligation on the part of petitioner to pay the insurance proceeds because petitioner is, in fact, the obligee or policyholder in the Personal Accident Policies. Since petitioner is not the party liable for the value of the insurance proceeds, it follows that the limited liability rule does not apply as well.

**APPEARANCES OF COUNSEL**

*Librojo & Associates Law Offices* for petitioner.
*Dela Cruz Entero & Associates* for respondents Gudelosao, *et al.*
*Homer N. Mendoza* for South Sea Surety & Insurance Co., Inc.
*Retoriano & Olalia-Retoriano Law Offices* for Top Ever Marine Management.

## D E C I S I O N

**JARDELEZA, *J.*:**

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court filed by Phil-Nippon Kyoei, Corp. (Petitioner) from the Decision[2] of the Court of Appeals (CA) dated October 4, 2007 (CA Decision) and its Resolution[3] dated January 11, 2008 in CA-G.R. SP No. 95456. The CA reinstated

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[1] *Rollo*, pp. 3-17.

[2] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Aurora Santiago Lagman. *Id.* at 19-39.

[3] Penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Aurora Santiago Lagman. *Id.* at 48-50.

the Labor Arbiter's Decision[4] dated August 5, 2004 (LA Decision) with the modification, among others, that petitioner is liable to respondents under the insurance cover it procured from South Sea Surety & Insurance Co., Inc. (SSSICI). The CA ruled that petitioner's liability would be extinguished only upon payment by SSSICI of the insurance proceeds to respondents.[5]

## Facts

Petitioner, a domestic shipping corporation, purchased a "Ro-Ro" passenger/cargo vessel "MV Mahlia" in Japan in February 2003.[6] For the vessel's one month conduction voyage from Japan to the Philippines, petitioner, as local principal, and Top Ever Marine Management Maritime Co., Ltd. (TMCL), as foreign principal, hired Edwin C. Gudelosao, Virgilio A. Tancontian, and six other crewmembers. They were hired through the local manning agency of TMCL, Top Ever Marine Management Philippine Corporation (TEMMPC). TEMMPC, through their president and general manager, Capt. Oscar Orbeta (Capt. Orbeta), and the eight crewmembers signed separate contracts of employment. Petitioner secured a Marine Insurance Policy (Maritime Policy No. 00001) from SSSICI over the vessel for ₱10,800,000.00 against loss, damage, and third party liability or expense, arising from the occurrence of the perils of the sea for the voyage of the vessel from Onomichi, Japan to Batangas, Philippines. This Marine Insurance Policy included Personal Accident Policies for the eight crewmembers for ₱3,240,000.00 each in case of accidental death or injury.[7]

On February 24, 2003, while still within Japanese waters, the vessel sank due to extreme bad weather condition. Only Chief Engineer Nilo Macasling survived the incident while the rest of the crewmembers, including Gudelosao and Tancontian, perished.[8]

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[4] CA *rollo*, pp. 68-80.

[5] *Rollo*, pp. 38-39.

[6] *Id.* at 8.

[7] *Id.* at 20-21; CA *rollo*, p. 69.

[8] CA *rollo*, p. 70.

Respondents, as heirs and beneficiaries of Gudelosao and Tancontian, filed separate complaints for death benefits and other damages against petitioner, TEMMPC, Capt. Orbeta, TMCL, and SSSICI, with the Arbitration Branch of the National Labor Relations Commission (NLRC).[9]

On August 5, 2004, Labor Arbiter (LA) Pablo S. Magat rendered a Decision[10] finding solidary liability among petitioner, TEMMPC, TMCL and Capt. Orbeta. The LA also found SSSICI liable to the respondents for the proceeds of the Personal Accident Policies and attorney's fees. The LA, however, ruled that the liability of petitioner shall be deemed extinguished only upon SSSICI's payment of the insurance proceeds. The dispositive portion of the LA Decision reads:

**WHEREFORE**, premises considered, **CAPT. OSCAR ORBETA, [TEMMPC], [TMCL], and PHIL-NIPPON KYOEI CORPORATION** are hereby directed to pay solidarily the complainants as follows:

| | Death Benefits | Burial Expenses | 10% atty's [fees] |
|---|---|---|---|
| 1. ROSALIA T. GUDELOSAO: | US$50,000 | US$1,000 | US$5,100 |
| 2. CARMEN B. TANCONTIAN: | US$50,000 | US$1,000 | US$5,100 |
| 3. CARMELA B. TANCONTIAN: | US$7,000 | | US$700 |
| 4. BEVERLY B. TANCONTIAN: | US$7,000 | | US$700 |
| 5. ACE B. TANCONTIAN: | US$7,000 | | US$700 |

**Further, respondent SOUTH SEA SURETY & INSURANCE CO., INC. is hereby directed to pay as beneficiaries complainants ROSALIA T. GUDELOSAO and CARMEN B. TANCONTIAN** [₱]3,240,000.00 each for the proceeds of the Personal Accident Policy Cover it issued for each of the deceased seafarers EDWIN C. GUDELOSAO and VIRGILIO A. TANCONTIAN plus 10%

[9] *Rollo*, p. 22.

[10] CA *rollo*, pp. 68-80.

attorney's fees thereof at [₱]324,000.00 each thereof or a total of [₱]648,000.00.

Nevertheless, upon payment of said proceeds to said widows by respondent **SOUTH SEA SURETY & INSURANCE CO., INC.,** respondent PHIL-NIPPON CORPORATION's liability to all the complainants is deemed extinguished.

Any other claim is hereby dismissed for lack of merit.

**SO ORDERED.**[11]

On appeal, the NLRC modified the LA Decision in a Resolution[12] dated February 28, 2006, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Appeals of Complainants and PNKC are GRANTED but only partially in the case of Complainants' Appeal, and the Appeal of [SSSICI] is DISMISSED for lack of merit. Accordingly, the Decision is SUSTAINED subject to the modification that [SSSICI] is DIRECTED to pay Complainants in addition to their awarded claims, in the appealed decision, additional death benefits of US$7,000 each to the minor children of Complainant Gudelosao, namely, Christy Mae T. Gudelosao and Rose Elden T. Gudelosao.
>
> As regards the other issues, the appealed Decision is SUSTAINED.
>
> SO ORDERED.[13]

The NLRC absolved petitioner, TEMMPC and TMCL and Capt. Orbeta from any liability based on the limited liability rule.[14] It, however, affirmed SSSICI's liability after finding that the Personal Accident Policies answer for the death benefit claims under the Philippine Overseas Employment Administration Standard Employment Contract (POEA-SEC).[15] Respondents

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

[12] *Id.* at 8-23.

[13] *Id.* at 22.

[14] *Id.* at 17-18.

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

filed a Partial Motion for Reconsideration which the NLRC denied in a Resolution dated May 5, 2006.[16]

Respondents filed a petition for *certiorari*[17] before the CA where they argued that the NLRC gravely abused its discretion in ruling that TEMMPC, TMCL, and Capt. Orbeta are absolved from the terms and conditions of the POEA-SEC by virtue of the limited liability rule. Respondents also argued that the NLRC gravely abused its discretion in ruling that the obligation to pay the surviving heirs rests solely on SSSICI. The CA granted the petition, the dispositive portion thereof reads:

WHEREFORE for being impressed with merit the petition is hereby GRANTED. Accordingly, the Resolution dated February 28, 2006, and Resolution, dated May 5, 2006, of the public respondent NLRC are hereby ***SET ASIDE***. The Decision of the Labor Arbiter dated [August 5, 2004] is ***REINSTATED***, subject to the following modifications:

(1) [R]espondents CAPT. OSCAR ORBETA, [TEMMPC] and [TMCL] (the manning agency), are hereby directed to pay solidarily the complainants as follows:

| | Death Benefits | Burial Expenses | 10% atty's [fees] |
|---|---|---|---|
| ROSALIA T. GUDELOSAO: | US$50,000 | US$1,000 | US$5,100 |
| CARMEN B. TANCONTIAN: | US$50,000 | US$1,000 | US$5,100 |
| CARMELA B. TANCONTIAN: | US$7,000 | | US$700 |
| BEVERLY B. TANCONTIAN: | US$7,000 | | US$700 |
| ACE B. TANCONTIAN: | US$7,000 | | US$700 |

Further, [respondents] CAPT. OSCAR ORBETA, [TEMMPC] and [TMCL] (the manning agency) are hereby directed to pay solidarily the complainants in addition to their awarded claims, additional

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[16] *Id.* at 25-27.

[17] *Id.* at 32-50.

death benefits of US$7,000 each to the minor children of petitioner Rosalia T. Gudelosao, namely, Christy Mae T. Gudelosao and Rose Elden T. Gudelosao.

Respondent SOUTH SEA SURETY & INSURANCE CO., INC. is hereby directed to pay as beneficiaries complainants ROSALIA T. GUDELOSAO and CARMEN B. TANCONTIAN [₱]3,240,000.00 each for the proceeds of the Personal Accident Policy Cover it issued for each of the deceased seafarers EDWIN C. GUDELOSAO and VIRGILIO A. TANCONTIAN plus 10% attorney's fees thereof at [₱]324,000.00 each thereof or a total of [₱]648,000.00.

Nevertheless, upon payment of said proceeds to said widows by respondent SOUTH SEA SURETY & INSURANCE CO., INC., respondent PHIL-NIPPON CORPORATION's liability to all the complainants is deemed extinguished.

SO ORDERED.[18]

The CA found that the NLRC erred when it ruled that the obligation of petitioner, TEMMPC and TMCL for the payment of death benefits under the POEA-SEC was *ipso facto* transferred to SSSICI upon the death of the seafarers. TEMMPC and TMCL cannot raise the defense of the total loss of the ship because its liability under POEA-SEC is separate and distinct from the liability of the shipowner.[19] To disregard the contract, which has the force of law between the parties, would defeat the purpose of the Labor Code and the rules and regulations issued by the Department of Labor and Employment (DOLE) in setting the minimum terms and conditions of employment for the protection of Filipino seamen.[20] The CA noted that the benefits being claimed are not dependent upon whether there is total loss of the vessel, because the liability attaches even if the vessel did not sink.[21] Thus, it was error for the NLRC to absolve TEMMPC and TMCL on the basis of the limited liability rule.

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[18] *Rollo*, pp. 38-39.

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

[20] *Id.* at 31-A.

[21] *Id.* at 32.

Significantly though, the CA ruled that petitioner is not liable under the POEA-SEC, but by virtue of its being a shipowner.[22] Thus, petitioner is liable for the injuries to passengers even without a determination of its fault or negligence. It is for this reason that petitioner obtained insurance from SSSICI — to protect itself against the consequences of a total loss of the vessel caused by the perils of the sea. Consequently, SSSICI's liability as petitioner's insurer directly arose from the contract of insurance against liability (*i.e.*, Personal Accident Policy).[23] The CA then ordered that petitioner's liability will only be extinguished upon payment by SSSICI of the insurance proceeds.[24]

Petitioner filed a Motion for Reconsideration[25] dated November 5, 2007 but this was denied by the CA in its Resolution[26] dated January 11, 2008. On the other hand, since SSSICI did not file a motion for reconsideration of the CA Decision, the CA issued a Partial Entry of Judgment[27] stating that the decision became final and executory as to SSSICI on October 27, 2007.

Hence, this petition where petitioner claims that the CA erred in ignoring the fundamental rule in Maritime Law that the shipowner may exempt itself from liability by abandoning the vessel and freight it may have earned during the voyage, and the proceeds of the insurance if any. Since the liability of the shipowner is limited to the value of the vessel unless there is insurance, any claim against petitioner is limited to the proceeds arising from the insurance policies procured from SSSICI. Thus, there is no reason in making petitioner's exoneration from liability conditional on SSSICI's payment of the insurance proceeds.

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[22] *Id.* at 33, 38.

[23] *Id.* at 33.

[24] *Id.* at 38.

[25] *Id.* at 40-47.

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

[27] CA *rollo*, p. 457.

On December 8, 2008, TEMMPC filed its Manifestation[28] informing us of TEMMPC and TMCL's Joint Motion to Dismiss the Petition and the CA's Resolution[29] dated January 11, 2008 granting it. The dismissal is based on the execution of the Release of All Rights and Full Satisfaction Claim[30] (Release and Quitclaim) on December 14, 2007 between respondents and TEMMPC, TMCL, and Capt. Orbeta. In a Resolution[31] dated January 28, 2009, we noted that TEMMPC, TMCL, and Capt. Orbeta will no longer comment on the Petition.

On the other hand, SSSICI filed its Comment[32] to the petition dated September 3, 2010. It alleged that the NLRC has no jurisdiction over the insurance claim because claims on the Personal Accident Policies did not arise from employer-employee relations. It also alleged that petitioner filed a complaint for sum of money[33] in the Regional Trial Court (RTC) of Manila, Branch 46, where it prays for the payment of the insurance proceeds on the individual Marine Insurance Policy with a Personal Accident Policy covering the crewmembers of MV Mahlia. This case was eventually dismissed and is now subject of an appeal[34] before the CA. SSSICI prays that this matter be considered in resolving the present case.[35]

**<u>Issues</u>**

I. Whether the doctrine of real and hypothecary nature of maritime law (also known as the limited liability rule) applies in favor of petitioner.

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[28] *Rollo*, pp. 73-76.

[29] *Id.* at 48-50; 90-92.

[30] *Id.* at 77-88.

[31] *Id.* at 95.

[32] *Id.* at 154-158.

[33] Civil Case No. 05-112271, *id.* at 155.

[34] CA-G.R. No. CV-97459 titled *Phil-Nippon Kyoei Corporation v. South Sea Surety & Insurance Co., Inc., id.* at 272.

[35] *Rollo*, pp. 156-157, 272.

II. Whether the CA erred in ruling that the liability of petitioner is extinguished only upon SSSICI's payment of insurance proceeds.

## Discussion

### I. Liability under the POEA Standard Employment Contract.

At the outset, the CA erred in absolving petitioner from the liabilities under the POEA-SEC. Petitioner was the local principal of the deceased seafarers for the conduction trip of MV Mahlia. Petitioner hired them through TMCL, which also acted through its agent, TEMMPC. Petitioner admitted its role as a principal of its agents TMCL, TEMMPC and Capt. Orbeta in their Joint Partial Appeal[36] before the NLRC.[37] As such, it is solidarily liable with TEMMPC and TMCL for the benefits under the POEA-SEC.

*Doctrine of limited liability is not applicable to claims under POEA-SEC.*

In this jurisdiction, the limited liability rule is embodied in Articles 587, 590 and 837 under Book III of the Code of Commerce, *viz.*:

Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freightage he may have earned during the voyage.

Art. 590. The co-owners of a vessel shall be civilly liable, in the proportion of their contribution to the common fund, for the results of the acts of the captain, referred to in Art. 587.

Each part-owner may exempt himself from this liability by the abandonment before a notary of the part of the vessel belonging to him.

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[36] CA *rollo*, pp. 130-143.

[37] *Id.* at 137.

Art. 837. The civil liability incurred by the shipowners in the cases prescribed in this section, shall be understood as limited to the value of the vessel with all its appurtenances and freightage earned during the voyage.

Article 837 applies the limited liability rule in cases of collision. Meanwhile, Articles 587 and 590 embody the universal principle of limited liability in all cases wherein the shipowner or agent may be properly held liable for the negligent or illicit acts of the captain.[38] These articles precisely intend to limit the liability of the shipowner or agent to the value of the vessel, its appurtenances and freightage earned in the voyage, provided that the owner or agent abandons the vessel.[39] When the vessel is totally lost, in which case abandonment is not required because there is no vessel to abandon, the liability of the shipowner or agent for damages is extinguished.[40] Nonetheless, the limited liability rule is not absolute and is without exceptions. It does not apply in cases: (1) where the injury or death to a passenger is due either to the fault of the shipowner, or to the concurring negligence of the shipowner and the captain; (2) where the vessel is insured; and (3) **in workmen's compensation claims**.[41]

In *Abueg v. San Diego*,[42] we ruled that the limited liability rule found in the Code of Commerce is inapplicable in a liability created by statute to compensate employees and laborers, or the heirs and dependents, in cases of injury received by or inflicted upon them while engaged in the performance of their work or employment, to wit:

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[38] See *Monarch Insurance Co., Inc. v. Court of Appeals*, G.R. Nos. 92735, 94867 & 95578, June 8, 2000, 333 SCRA 71, 94-95 citing *Yangco v. Laserna*, 73 Phil. 330 (1941).

[39] *Aboitiz Shipping Corporation v. Court of Appeals*, G.R. Nos. 121833, 130752 & 137801, October 17, 2008, 569 SCRA 294.

[40] *Id.* at 307-308.

[41] *Chua Yek Hong v. Intermediate Appellate Court*, G.R. No. 74811, September 30, 1988, 166 SCRA 183, 189.

[42] 77 Phil. 730 (1946).

The *real* and *hypothecary* nature of the liability of the shipowner or agent embodied in the provisions of the Maritime Law, Book III, Code of Commerce, had its origin in the prevailing conditions of the maritime trade and sea voyages during the medieval ages, attended by innumerable hazards and perils. To offset against these adverse conditions and to encourage shipbuilding and maritime commerce, it was deemed necessary to confine the liability of the owner or agent arising from the operation of a ship to the vessel, equipment, and freight, or insurance, if any, so that if the shipowner or agent abandoned the ship, equipment, and freight, his liability was extinguished.

But the provisions of the Code of Commerce invoked by appellant have no room in the application of the Workmen's Compensation Act which seeks to improve, and aims at the amelioration of, the condition of laborers and employees. It is not the liability for the damage or loss of the cargo or injury to, or death of, a passenger by or through the misconduct of the captain or master of the ship; nor the liability for the loss of the ship as a result of collision; nor the responsibility for wages of the crew, but a liability created by a statute to compensate employees and laborers in cases of injury received by or inflicted upon them, while engaged in the performance of their work or employment, or the heirs and dependents of such laborers and employees in the event of death caused by their employment. Such compensation has nothing to do with the provisions of the Code of Commerce regarding maritime commerce. It is an item in the cost of production which must be included in the budget of any well-managed industry.[43] (Underscoring supplied.)

We see no reason why the above doctrine should not apply here.

Act No. 3428, otherwise known as The Workmen's Compensation Act[44] is the first law on workmen's compensation in the Philippines for work-related injury, illness, or death. This was repealed on November 1, 1974 by the Labor Code,[45] and

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[43] *Id.* at 733-734.

[44] An Act Prescribing the Compensation to be Received by Employees for Personal Injuries, Death or Illness Contracted in the Performance of Their Duties (1927).

[45] Presidential Decree No. 442 (1974). A Decree Instituting a Labor Code, Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor, Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice.

was further amended on December 27, 1974 by Presidential Decree No. 626.[46] The pertinent provisions are now found in Title II, Book IV of the Labor Code on Employees Compensation and State Insurance Fund.

The death benefits granted under Title II, Book IV of the Labor Code are similar to the death benefits granted under the POEA-SEC.[47] Specifically, its Section 20(A)(1) and (4)(c) provides that:

1. In case of work-related death of the seafarer, during the term of his contract the employer shall pay his beneficiaries the Philippine Currency equivalent to the amount of Fifty Thousand US dollars (US$50,000) and an additional amount of Seven Thousand US dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four (4) children, at the exchange rate prevailing during the time of payment.

x x x x x x x x x

4. The other liabilities of the employer when the seafarer dies as a result of work-related injury or illness during the term of employment are as follows:

x x x x x x x x x

c. The employer shall pay the beneficiaries of the seafarer the [Philippine] currency equivalent to the amount of One Thousand US dollars (US$1,000) for burial expenses at the exchange rate prevailing during the time of payment.

Akin to the death benefits under the Labor Code, these benefits under the POEA-SEC are given when the employee dies due to

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[46] Further Amending Certain Articles of Presidential Decree No. 442 entitled "Labor Code of the Philippines."

[47] 2000 Amended Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels, DOLE Department Order No. 4 (2000); POEA Memorandum Circular No. 9 (2000). This is the applicable amendment at the time the contract of employment was executed in 2003.

a work-related cause during the term of his contract.[48] The liability of the shipowner or agent under the POEA-SEC has likewise nothing to do with the provisions of the Code of Commerce regarding maritime commerce. The death benefits granted under the POEA-SEC is not due to the death of a passenger by or through the misconduct of the captain or master of the ship; nor is it the liability for the loss of the ship as result of collision; nor the liability for wages of the crew. It is a liability created by contract between the seafarers and their employers, but secured through the State's intervention as a matter of constitutional and statutory duty to protect Filipino overseas workers and to secure for them the best terms and conditions possible, in order to compensate the seafarers' heirs and dependents in the event of death while engaged in the performance of their work or employment. The POEA-SEC prescribes the set of standard provisions established and implemented by the POEA containing the minimum requirements prescribed by the government for the employment of Filipino seafarers. While it is contractual in nature, the POEA-SEC is designed primarily for the protection and benefit of Filipino seamen in the pursuit of their employment on board ocean-going vessels.[49] As such, it is deemed incorporated in every Filipino seafarers' contract of employment.[50] It is established pursuant to POEA's power "to secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith" and "to protect the well-being of Filipino workers overseas"[51] pursuant to Article 17 of the Labor Code as amended by Executive Order (EO) Nos. 797[52] and 247.[53]

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[48] See *Racelis v. United Philippine Lines, Inc*., G.R. No. 198408, November 12, 2014, 740 SCRA 122, 130-131.

[49] See *Bergesen D.Y. Philippines, Inc. v. Estenzo*, G.R. No. 141269, December 9, 2005, 477 SCRA 150, 157.

[50] *Racelis v. United Philippine Lines, Inc., supra* at 130.

[51] See *Talosig v. United Philippine Lines, Inc*., G.R. No. 198388, July 28, 2014, 731 SCRA 180, 187-188.

[52] Reorganizing the Ministry of Labor and Employment, Creating the Philippine Overseas Employment Administration, and for Other Purposes (1982).

[53] Reorganizing the Philippines Overseas Employment Administration and for Other Purposes (1987).

But while the nature of death benefits under the Labor Code and the POEA-SEC are similar, the death benefits under the POEA-SEC are intended to be separate and distinct from, and in addition to, whatever benefits the seafarer is entitled to under Philippine laws, including those benefits which may be claimed from the State Insurance Fund.[54]

Thus, the claim for death benefits under the POEA-SEC is the same species as the workmen's compensation claims under the Labor Code — both of which belong to a different realm from that of Maritime Law. Therefore, the limited liability rule does not apply to petitioner's liability under the POEA-SEC.

*Nevertheless, the Release and Quitclaim benefit petitioner as a solidary debtor.*

All the same, the Release and Quitclaim executed between TEMMPC, TMCL and Capt. Oscar Orbeta, and respondents redounded to the benefit of petitioner as a solidary debtor.

Petitioner is solidarily liable with TEMMPC and TMCL for the death benefits under the POEA-SEC. The basis of the solidary liability of the principal with the local manning agent is found in the second paragraph of Section 10 of the Migrant Workers and Overseas Filipino Act of 1995,[55] which, in part, provides: "[t]he liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several." This provision, is in turn, implemented by Section 1(e)(8), Rule 2, Part II of the POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, which requires the undertaking of the manning agency to "[a]ssume joint and solidary liability with the employer for all claims and liabilities which may arise in connection with the implementation of the employment contract [and POEA-SEC]."

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[54] Section 20(A)(3), POEA-SEC.

[55] Republic Act (RA) No. 8042 (1995), as amended by RA No. 10022 (2010).

We have consistently applied the Civil Code provisions on solidary obligations, specifically Articles 1217[56] and 1222,[57] to labor cases.[58] We explained in *Varorient Shipping Co., Inc. v. NLRC*[59] the nature of the solidary liability in labor cases, to wit:

x x x The POEA Rules holds her, as a corporate officer, solidarily liable with the local licensed manning agency. Her liability is inseparable from those of Varorient and Lagoa. If anyone of them is held liable then all of them would be liable for the same obligation. **Each of the solidary debtors, insofar as the creditor/s is/are concerned, is the debtor of the entire amount; it is only with respect to his co-debtors that he/she is liable to the extent of his/her share in the obligation. Such being the case, the Civil Code allows each solidary debtor, in actions filed by the creditor/s, to avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertaining to his share.** He may also avail of those defenses personally belonging to his co-debtors, but only to the extent of their share in the debt. Thus, Varorient may set up all the defenses pertaining to Colarina and Lagoa; whereas Colarina and Lagoa are liable only to the extent to which Varorient may be found liable by the court. The complaint against Varorient, Lagoa and Colarina is founded on a common cause of action; hence, the defense or the appeal by anyone of these solidary debtors would redound to the benefit of the others.

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x x x If Varorient were to be found liable and made to pay pursuant thereto, the entire obligation would already be extinguished even if

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[56] Art. 1217. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept. x x x

[57] Art. 1222. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible.

[58] See *Vigilla v. Philippine College of Criminology, Inc.,* G.R. No. 200094, June 10, 2013, 698 SCRA 247, 269.

[59] G.R. No. 164940, November 28, 2007, 539 SCRA 131.

no attempt was made to enforce the judgment against Colarina. Because **there existed a common cause of action against the three solidary obligors, as the acts and omissions imputed against them are one and the same, an ultimate finding that Varorient was not liable would, under these circumstances, logically imply a similar exoneration from liability for Colarina and Lagoa, whether or not they interposed any defense**.[60] (Emphasis supplied.)

Thus, the rule is that the release of one solidary debtor redounds to the benefit of the others.[61] Considering that petitioner is solidarily liable with TEMMPC and TMCL, we hold that the Release and Quitclaim executed by respondents in favor of TEMMPC and TMCL redounded to petitioner's benefit. Accordingly, the liabilities of petitioner under Section 20(A)(1) and (4) (c) of the POEA-SEC to respondents are now deemed extinguished. We emphasize, however, that this pronouncement does not foreclose the right of reimbursement of the solidary debtors who paid (*i.e.*, TEMMPC and TMCL) from petitioner as their co-debtor.

**II. Liability under the Personal Accident Policies.**

*The NLRC has jurisdiction over the claim on the Personal Accident Policies.*

We find that the CA correctly upheld the NLRC's jurisdiction to order SSSICI to pay respondents the value of the proceeds of the Personal Accident Policies.

The Migrant Workers and Overseas Filipinos Act of 1995 gives the Labor Arbiters of the NLRC the original and exclusive jurisdiction over claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment, including claims for actual, moral, exemplary and other forms of damage. It further creates a joint and several liability among the principal or employer,

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[60] *Id.* at 140-143.

[61] Section 10, RA No. 8042, as amended by RA No. 10022.

and the recruitment/placement agency, for any and all claims involving Filipino workers, *viz.*:

SEC. 10. *Money Claims.* — **Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide**, within ninety (90) calendar days after the filing of the complaint, **the claims arising** out of an employer-employee relationship or **by virtue of any law or contract involving Filipino workers for overseas deployment** including claims for actual, moral, exemplary and other forms of damages. Consistent with this mandate, the NLRC shall endeavor to update and keep abreast with the developments in the global services industry.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages. x x x (Emphasis supplied.)

In *Finman General Assurance Corp. v. Inocencio*,[62] we upheld the jurisdiction of the POEA to determine a surety's liability under its bond. We ruled that the adjudicatory power to do so is not vested with the Insurance Commission exclusively. The POEA (now the NLRC) is vested with quasi-judicial powers over all cases, including money claims, involving employer-employee relations arising out of or by virtue of any law or contract involving Filipino workers for overseas employment.[63] Here, the award of the insurance proceeds arose out of the personal accident insurance procured by petitioner as the local principal over the deceased seafarers who were Filipino overseas

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[62] G.R. Nos. 90273-75, November 15, 1989, 179 SCRA 480.

[63] *Id.* at 487-488.

workers. The premiums paid by petitioner were, in actuality, part of the total compensation paid for the services of the crewmembers.[64] Put differently, the labor of the employees is the true source of the benefits which are a form of additional compensation to them. Undeniably, such claim on the personal accident cover is a claim under an insurance contract *involving Filipino workers for overseas deployment* within the jurisdiction of the NLRC.

It must also be noted that the amendment under Section 37-A of the Migrant Workers and Overseas Filipinos Act of 1995 on Compulsory Insurance Coverage does not apply. The amendment requires the claimant to bring any question or dispute in the enforcement of any insurance policy before the Insurance Commission for mediation or adjudication. The amendment, however, took effect on May 8, 2010 long after the Personal Accident Policies in this case were procured in 2003. Accordingly, the NLRC has jurisdiction over the claim for proceeds under the Personal Accident Policies.

In any event, SSSICI can no longer assail its liability under the Personal Accident Policies. SSSICI failed to file a motion for reconsideration on the CA Decision. In a Resolution dated April 24, 2008, the CA certified in a Partial Entry of Judgment that the CA Decision with respect to SSSICI has become final and executory and is recorded in the Book of Entries of Judgments.[65] A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. This holds true whether the modification is made by the court that rendered it or by the highest court in the land. Thus, SSSICI's liability on the Personal Accident Policies can no longer be disturbed in this petition.

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[64] See *Pineda v. Court of Appeals*, G.R. No. 105562, September 27, 1993, 226 SCRA 754, 765.

[65] CA *rollo*, pp. 456-457.

*SSSICI's liability as insurer under the Personal Accident Policies is direct.*

We, however, find that the CA erred in ruling that "upon payment of [the insurance] proceeds to said widows by respondent SOUTH SEA SURETY & INSURANCE CO., INC., respondent PHIL-NIPPON CORPORATION's liability to all the complainants is deemed extinguished."[66]

This ruling makes petitioner's liability conditional upon SSSICI's payment of the insurance proceeds. In doing so, the CA determined that the Personal Accident Policies are casualty insurance, specifically one of liability insurance. The CA determined that petitioner, as insured, procured from SSSICI the Personal Accident Policies in order to protect itself from the consequences of the total loss of the vessel caused by the perils of the sea. The CA found that the liabilities insured against are all monetary claims, excluding the benefits under the POEA-SEC, of respondents in connection with the sinking of the vessel.

We rule that while the Personal Accident Policies are casualty insurance, they do not answer for petitioner's liabilities arising from the sinking of the vessel. It is an indemnity insurance procured by petitioner for the benefit of the seafarers. As a result, petitioner is not directly liable to pay under the policies because it is merely the policyholder of the Personal Accident Policies.

Section 176 (formerly Sec. 174) of The Insurance Code[67] defines casualty insurance as follows:

SEC. 174. **Casualty insurance is insurance covering loss or liability arising from accident or mishap, excluding certain types of loss which by law or custom are considered as falling exclusively within the scope of other types of insurance such as fire or marine. It includes,** but is not limited to, employer's liability insurance, motor vehicle liability insurance, plate glass insurance, burglary and theft insurance, **personal accident and health insurance as written by**

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[66] *Rollo*, p. 39.

[67] Presidential Decree No. 612 (1974), as amended by RA No. 10607 (2013).

**non-life insurance companies**, and other substantially similar kinds of insurance. (Emphasis supplied.)

Based on Section 176, casualty insurance may cover liability or loss arising from accident or mishap. In a liability insurance, the insurer assumes the obligation to pay third party in whose favor the liability of the insured arises.[68] On the other hand, personal accident insurance refers to insurance against death or injury by accident or accidental means.[69] In an accidental death policy, the accident causing the death is the thing insured against.[70]

Notably, the parties did not submit the Personal Accident Policies with the NLRC or the CA. However, based on the pleadings submitted by the parties, SSSICI admitted that the crewmembers of MV Mahlia are insured for the amount of ₱3,240,000.00, payable upon the accidental death of the crewmembers.[71] It further admitted that the insured risk is the loss of life or bodily injury brought about by the violent external event or accidental means.[72] Based on the foregoing, the insurer itself admits that what is being insured against is not the liability of the shipowner for death or injuries to passengers but the death of the seafarers arising from accident.

The liability of SSSICI to the beneficiaries is direct under the insurance contract.[73] Under the contract, petitioner is the policyholder, with SSSICI as the insurer, the crewmembers as the *cestui que vie* or the person whose life is being insured with another as beneficiary of the proceeds,[74] and the latter's heirs

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[68] Campos, *INSURANCE*, 1983, pp. 201-202.

[69] See 43 Am Jur 2d Insurance § 555. See also De Leon & De Leon, Jr., *THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED*, 2014, p. 426.

[70] *Oglesby-Barnitz Bank and Trust Co. v. Clark*, 112 Ohio App. 31, 38, 175 N.E. 2d 98, 103 (1959).

[71] Position Paper for SSSICI before the NLRC, CA *rollo*, pp. 118-123.

[72] *Id.* at 122-123.

[73] See *Malayan Insurance Co., Inc. v. Philippines First Insurance Co., Inc.*, G.R. No. 184300, July 11, 2012, 676 SCRA 268, 286.

[74] See Carale, *THE PHILIPPINE INSURANCE LAW CODE, COMMENTS AND CASES*, 2014, p. 103.

as beneficiaries of the policies. Upon petitioner's payment of the premiums intended as additional compensation to the crewmembers, SSSICI as insurer undertook to indemnify the crewmembers' beneficiaries from an unknown or contingent event.[75] Thus, when the CA conditioned the extinguishment of petitioner's liability on SSSICI's payment of the Personal Accident Policies' proceeds, it made a finding that petitioner is subsidiarily liable for the face value of the policies. To reiterate, however, there is no basis for such finding; there is no obligation on the part of petitioner to pay the insurance proceeds because petitioner is, in fact, the obligee or policyholder in the Personal Accident Policies. Since petitioner is not the party liable for the value of the insurance proceeds, it follows that the limited liability rule does not apply as well.

One final note. Petitioner's claim that the limited liability rule and its corresponding exception (*i.e.*, where the vessel is insured) apply here is irrelevant because petitioner was not found liable under tort or *quasi-delict*. Moreover, the insurance proceeds contemplated under the exception in the case of a lost vessel are the insurance over the vessel and pending freightage for the particular voyage.[76] It is not the insurance in favor of the seafarers, the proceeds of which are intended for their beneficiaries. Thus, if ever petitioner is liable for the value of the insurance proceeds under tort or *quasi-delict*, it would be from the Marine Insurance Policy over the vessel and not from the Personal Accident Policies over the seafarers.

**WHEREFORE,** the petition is **PARTLY GRANTED**. The CA Decision dated October 4, 2007 and the Resolution dated January 11, 2008 of the Court of Appeals are **AFFIRMED WITH THE FOLLOWING MODIFICATIONS:**

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[75] Sec. 2 (1) of The Insurance Code provides: "A *contract of insurance* is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage, or liability arising from an unknown or contingent event. x x x"

[76] *Aboitiz Shipping Corporation v. General Accident Fire and Life Assurance Corporation, Ltd.*, G.R. No. 100446, January 21, 1993, 217 SCRA 359, 371.

(1) The death benefits are limited to the amount granted under the Release of All Rights and Full Satisfaction of Claim dated December 14, 2007 executed between respondents and Top Ever Marine Management Company Ltd., Top Ever Marine Management Philippine Corporation, and Captain Oscar Orbeta;

(2) As a solidary co-debtor, petitioner's liability to respondents under the POEA-SEC is also extinguished by virtue of the Release of All Rights and Full Satisfaction of Claim dated December 14, 2007; and

(3) The last paragraph of the dispositive portion of the CA Decision dated October 4, 2007 stating: "Nevertheless, upon payment of said proceeds to said widows by respondent SOUTH SEA SURETY & INSURANCE CO., INC., respondent PHIL-NIPPON CORPORATION's liability to all the complainants is deemed extinguished . . ." is **DELETED**.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, del Castillo,*[*] and *Perez, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 187400. July 13, 2016]

**FELICISIMO FERNANDEZ, SPOUSES DANILO and GENEROSA VITUG-LIGON,** *petitioners, vs.* **SPOUSES ISAAC and CONCEPCION RONULO,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; RULES OF PROCEDURE; MAY BE SUSPENDED WHEN THEIR RIGID APPLICATION**

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[*] Designated Additional Member per Raffle dated September 1, 2014.

**WOULD FRUSTRATE RATHER THAN PROMOTE JUSTICE.—** Indeed, the rules were conceived and promulgated not only to effectively dispense justice, but also to fully protect the rights of the parties. Courts, however, are not shorn of the discretion to suspend the rules or except a particular case from their operation when their rigid application would frustrate rather than promote justice. The policy is to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that litigants are given the full opportunity for a just and proper disposition of their cause. In some cases, it is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice. In those cases, in which technicalities are dispensed with, the courts do not mean to undermine the force and effectivity of the periods set by law. When the courts do so, it is because of the existence of a clear need to prevent the commission of a grave injustice. x x x Moreover, it bears stressing that rules of procedure are construed liberally in proceedings before administrative bodies.

2. **ID.; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED SOLELY TO A REVIEW OF ERRORS OF LAW.—** [T]he jurisdiction of this Court in a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. Factual questions are not the proper subject of an appeal by *certiorari*. A question of law is present when there is a doubt or difference in opinion as to what the law is on a certain set of facts, while a question of fact exists when a doubt or difference arises as to the truth or falsehood of the alleged facts. Unless the case falls under any of the recognized exceptions, the Court is limited solely to a review of legal questions. The allegation of petitioners that there was an omission on the part of the CA when it failed to resolve the issues they had put forth obviously involves a factual question, which is outside this Court's authority to act upon.

**APPEARANCES OF COUNSEL**

*Valdez & Valdez Law Offices* for petitioners.
*Cecilia Sioco-Fernandez* for respondents.

## DECISION

**SERENO, *C.J.*:**

This is a Petition for Review on Certiorari[1] under Rule 45 seeking to annul and set aside the Decision[2] and the Resolution[3] of the Court of Appeals (CA) dated 22 December 2008 and 17 April 2009, respectively, in CA-G.R. SP No. 85011.

This case stemmed from the Order[4] dated 09 October 1995 issued by Regional Director Antonio G. Principe (Director Principe) of the Department of Environment and Natural Resources (DENR) in DENR Case No. IV-5516. The Order cancelled the Survey Plan with Psu No. 04-008565 in the name of Tomas Fernandez, as it included the land that respondents were occupying.[5]

In the appeal[6] docketed as DENR Case No. 5102, the DENR Secretary promulgated a Decision[7] dated 28 May 1999 reversing the Order of Director Principe.

In O.P. Case No. 00-1-9241,[8] the Office of the President (OP) issued the Resolution[9] and the Order[10] dated 24 March 2004

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

[2] *Id.* at 44-65; penned by Associate Justice Regalado E. Maambong with the concurrence of Associate Justices Monina Arevalo-Zenarosa and Arturo G. Tayag.

[3] *Id.* at 67-69; penned by Associate Justice Monina Arevalo-Zenarosa, with the concurrence of Associate Justices Josefina Guevara-Salonga and Arturo G. Tayag.

[4] *Id.* at 194-197.

[5] *Id.* at 12.

[6] *Id.* at 81.

[7] *Id.* at 81-96.

[8] *Id.* at 80.

[9] *Id.* at 105-111.

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

and 11 June 2004, respectively, reversing and setting aside the Decision of the DENR Secretary.

The assailed CA Decision and Resolution affirmed the OP's Resolution and Order.[11]

**Antecedent Facts**

Sometime in 1970, Tomas Fernandez filed a Free Patent Application over a parcel of land with an area of 9,478 square meters located in *Sitio* Kuala, *Barangay* Wawa in Nasugbu, Batangas.[12] When he died, his son Felicisimo (herein petitioner) pursued the application. On 24 April 1984, the Bureau of Lands (BoL) approved Survey Plan Psu No. 04-008565 covering the entire property.[13]

In 1985, respondents asked the OP to investigate their claim that the approved Survey Plan in the name of Tomas Fernandez included the 1,000 square meters of land they had been occupying since the 1950s. The OP referred the matter to the BoL, which then referred it to the DENR Region IV Office for appropriate action.[14]

Acting on that same request of respondents, Presidential Executive Assistant Juan C. Tuvera also issued a Memorandum dated 12 April 1985 regarding the matter.[15] The request became the subject of a Memorandum Order of Investigation dated 25 April 1985 sent by Assistant Regional Director Claudio C. Batilles, Regional Lands Office No. IV, Quezon City, to Atty. Raymundo L. Apuhin of the same office.[16]

***Findings of the DENR Region IV Office***

On 20 March 1985, Land Inspector Julian B. De Roxas of the Sub Office of the BoL in Balayan, Batangas, conducted an

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[11] *Supra* notes 2 and 3.

[12] *Id.* at 45.

[13] *Id.* at 11.

[14] *Id.*

[15] *Id.* at 46.

[16] *Id.* at 47.

investigation and ocular inspection to determine the veracity of respondents' claim. Roxas submitted his Report of Investigation on 21 May 1985 recommending the dismissal of the claim. Concurring with the Report, the officer-in-charge of the sub office indorsed it to the Regional Land Director, Regional Office No. IV, Quezon City, on the same date.[17]

***Findings of Regional Lands Office No. IV***

Atty. Apuhin likewise conducted his own investigation and ocular inspection covering the subject land on 20 May 1985. In his initial report dated 21 May 1985 submitted to Assistant Regional Director Batilles, Atty. Apuhin verified and ascertained that (1) the land was situated at *Sitio* Kuala, *Barangay* Wawa, Nasugbu, Batangas; (2) there were improvements on the property allegedly introduced by respondents; and (3) respondents had previously stayed outside the land and only transferred their house within in 1984. The report also mentioned that Fernandez could not pinpoint the improvements that he and his predecessors-in-interest might have introduced on the land.[18]

On 26 November 1987, Atty. Apuhin wrote a letter to the Regional Technical Director (RTD) of the Land Management Sector in Region IV. The former requested that the continuation of the investigation be referred to the District Land Officer of Balayan, Batangas, up to its termination.[19] RTD Pedro Calimlim acted on the request in a 1st Indorsement dated 04 December 1987.[20]

On 18 April 1991, Atty. Apuhin submitted his Final Report of Investigation to the Regional Executive Director of DENR Region IV in Ermita, Manila.[21] The former recommended that the survey plan in the name of Tomas Fernandez be cancelled.

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[17] *Supra* note 13.

[18] *Id.* at 47-48.

[19] *Id.* at 48.

[20] *Id.* at 12.

[21] *Id.* at 49.

Regional Executive Director (Provision Region IV-A) Antonio G. Principe subsequently issued an Order dated 09 October 1995 in DENR Case No. IV-5516, *Isaac and Concepcion Ronulo v. Felicisimo Fernandez*, adopting *in toto* the report and recommendation of Atty. Apuhin.[22] The Order stated that petitioner Fernandez failed to establish his claim of ownership over the land in question[23] and was found to have never occupied or possessed even a portion thereof. It was ruled that respondents had a better preferential right to the land in question for being its actual occupants and possessors for quite a number of years already.[24]

On 20 November 1995, petitioner Fernandez moved for reconsideration of the Order dated 9 October 1995.[25] Director Principe denied the motion on 8 January 1996.[26] The Order became final and executory, as no appeal thereon was filed within the allowed period.[27] The DENR Region IV Office issued a Certificate of Finality dated 5 March 1996.[28] A day before the issuance of the certification or on 4 March 1996, however, petitioner Fernandez filed a notice of appeal on the Order of Director Principe at the Office of the DENR Secretary.[29] The appeal was docketed as DENR Case No. 5102.[30]

***Disposition of the subject property by the parties***

In the meantime, the then already widowed Concepcion Ronulo (Concepcion) and petitioner Fernandez made separate dispositions involving the disputed lot. Concepcion, on the one hand, executed

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[22] *Supra* note 4.

[23] CA *rollo*, p. 98.

[24] *Id.* at 100.

[25] *Rollo*, p. 436.

[26] *Id.* at 52.

[27] *Id.* at 437; CA *rollo*, p. 426.

[28] *Id.*

[29] *Id.* at 437.

[30] *Id.* at 52.

an Affidavit of Waiver of Rights on 20 October 1995 over the property, subject of DENR Case No. IV-5516, in favor of Charlie Lim. The Affidavit also identified Lim as the one who "would file the appropriate public land application."[31] On even date, the children of Concepcion executed an Affidavit of conformity to the waiver, conveyance, and transfer of the property to Lim.[32]

Petitioner Fernandez, on the other hand, sold the entire 9,478-square-meter property to the spouses Ligon, who introduced improvements thereon, including a beach house. On 31 October 1995, the Registry of Deeds of Nasugbu, Batangas, issued Transfer Certificate of Title (TCT) No. TP-1792 in the name of the spouses Ligon from Free Patent No. IV03A issued on 11 December 1986 and an analogous Original Certificate of Title (OCT) No. OP-1808 dated 16 December 1993, both in the name of petitioner Fernandez.[33]

***Complaint for Forcible Entry***

On 17 September 1996, Lim filed a separate Complaint for forcible entry against the spouses Ligon with the Municipal Trial Court (MTC) of Nasugbu.[34] The MTC ruled in favor of Lim based on the evidence of his prior possession of the land and ordered the spouses Ligon to vacate the property.[35] On appeal, the Regional Trial Court (RTC) and thereafter the CA sustained the judgment of the MTC.[36] The case was brought to the Supreme Court as *Spouses Ligon v. Lim* and was docketed as G.R. No. 139856.[37]

***Continuation of Administrative Proceedings***

In the administrative proceedings, meanwhile, the DENR Secretary noted the conflicting findings of De Roxas and Atty.

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[31] *Id.* at 13, 52; CA *rollo*, pp. 419, 456.

[32] *Id.* at 13, *Id.* at 456.

[33] *Id.*

[34] CA *rollo*, p. 345.

[35] *Id.* at 411-412.

[36] *Id.* at 413-430.

[37] *Id.* at 431.

Apuhin in the records of DENR Case No. IV-5516. The Secretary issued a Memorandum dated 3 June 1998 addressed to the DENR Legal Service directing an investigation on and ocular inspection of the property. The purpose was to determine and verify the truth of the allegations in the appeal of petitioner Fernandez.[38]

The Legal Service found that (1) the improvements introduced by the spouses Ligon were approximately valued at ₱7 million; (2) TCT No. TP-1792 was duly registered and entered in the books of the Registry of Deeds of Nasugbu, Batangas in the name of the spouses Ligon; (3) the land was located at *Sitio* Kuala, *Barangay* Wawa, Nasugbu, Batangas, and was owned by petitioner Fernandez; and (4) the spouses Isaac and Concepcion Ronulo (spouses Ronulo) abandoned the property in 1995, after which their whereabouts could no longer be ascertained based on information gathered from appellant's previous counsel, a certain Atty. Unay.[39]

***Ruling of the DENR Secretary***

On 28 May 1999, the DENR Secretary rendered a Decision in DENR Case No. 5102, the dispositive portion of which states:[40]

> WHEREFORE, the Protest of appellees, Sps. Isaac and Concepcion Ronulo is hereby DISMISSED AND DROPPED from the records of the case for lack of merit. Consequently, the Order dated October 9, 1995 of DENR Region IV Regional Executive Director is hereby ordered REVERSED and the Transfer Certificate of Title (TCT) No. TP-1792 in the name of Spouses Danilo and Generosa Vitug Ligon is hereby ordered and shall remain UNDISTURBED for having attained the category of a private property.

The ruling was anchored on the findings that (1) the Protest of respondents was filed out of time;[41] and (2) the Order of Director Principe was a collateral attack against the title of the

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[38] *Rollo*, p. 85.

[39] *Id.*

[40] *Id.* at 53.

[41] *Id.* at 91.

spouses Ligon.[42] Quoting the Court in *Legarda v. Saleeby*,[43] the DENR Secretary said that "[a] title may be attacked only on the ground of actual fraud within one (1) year from the date of its entry" and that "[s]uch attack must be direct and not by a collateral proceeding."[44]

On 18 June 1999, respondents moved for the reconsideration[45] of the Decision, but the DENR Secretary denied their motion in an Order[46] dated 21 December 1999.

On 16 January 2000, respondents filed a second Motion for Reconsideration,[47] in which they presented the Resolution[48] of the Court in *Spouses Ligon*[49] (G.R. No. 139856), which involved the ejectment case. Respondents claimed that the Court's denial of the Petition in that case in effect sustained the findings of the MTC, the RTC, and the CA that petitioner Fernandez had never been in actual occupation and possession of the subject property, consistent with the findings of Director Principe.[50]

***Complaint for Quieting of Title, Recovery of Possession, and Damages***

On 21 February 2000, the spouses Ligon filed a separate Complaint for quieting of title, recovery of possession, and damages with prayer for a Temporary Restraining Order (TRO) and Preliminary Injunction against Lim before the RTC, Nasugbu, Batangas, Branch 14, over the **entire 9,478-square-meter**

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[42] *Id.* at 94.

[43] 31 Phil. 590 (1915).

[44] *Rollo*, pp. 94-95.

[45] *Id.* at 231-239.

[46] *Id.* at 240-243.

[47] *Id.* at 244-248.

[48] CA *rollo*, p. 431.

[49] *Spouses Ligon v. Lim*, G.R. No. 139856 (Resolution), 13 October 1999.

[50] *Rollo*, p. 245.

**property**.[51] In its Decision[52] dated 3 February 2004, the trial court declared the spouses Ligon as the owners of the property and ordered that it be returned to their possession.

Lim appealed to the CA, which affirmed the judgment of the RTC with modifications as to the monetary awards.[53] The case reached the Supreme Court as *Lim v. Spouses Ligon*[54] and docketed as G.R. No. 183589.

***Denial of the Second Motion for Reconsideration Before the DENR Secretary***

On 29 August 2000, the DENR Secretary issued an Order[55] denying respondents' second Motion for Reconsideration. The Order underscored the point that the motion did not toll the time to appeal, since it was a prohibited pleading.[56] Respondents received the Order on 05 September 2000.[57]

***Appeal to the OP and its Ruling***

On 28 September 2000, the counsel of petitioners received the Appeal Memorandum filed by respondents with the OP where the appeal was docketed as O.P. Case No. 00-1-9241.[58]

On 10 October 2000, petitioner Fernandez filed a Motion to Dismiss Appeal[59] with the OP, citing respondents' failure to perfect the appeal. The movant claimed that the appeal was

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[51] *Id.* at 249-262.

[52] *Id.* at 263-273; penned by Acting Presiding Judge Elihu A. Ybanez of the Regional Trial Court, Nasugbu, Batangas, Branch 14.

[53] *Lim v. Spouses Ligon*, G.R. No. 183589, 25 June 2014.

[54] *Id.*

[55] *Rollo*, pp. 274-275.

[56] *Id.* at 274.

[57] *Id.* at 15.

[58] *Supra* note 8.

[59] *Rollo*, pp. 304-307.

time-barred, as the DENR had ruled that the filing of respondents' second Motion for Reconsideration did not toll the period of appeal.[60] Moreover, he alleged that respondents committed a procedural lapse by filing an appeal memorandum directly with the OP, instead of filing a notice of appeal with the agency that adjudicated the case — the DENR in this instance — and paying the appeal fee therein as the rules required.[61]

The OP did not act upon the motion of petitioner Fernandez,[62] but eventually dismissed the appeal of respondents in a Resolution[63] dated 27 June 2003.

On 27 August 2003, respondents filed a Motion for Reconsideration,[64] arguing that their appeal was highly meritorious.[65] They claimed that the one-page Resolution of the OP dismissing their appeal violated Section 14, Article VIII of the Constitution,[66] as it merely adopted by reference the findings of fact in the Decision dated 28 May 1999 issued by the DENR Secretary.[67]

***Ruling of the OP on the Motion for Reconsideration***

In a Resolution[68] dated 24 March 2004, the OP granted respondents' motion, reversing and setting aside the DENR Secretary's Decision dated 28 May 1999. The OP said that it had been established "that appellants have been the actual occupants of the disputed land since 1953 or for more than

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[60] *Id.* at 305.

[61] *Id.* at 305-306.

[62] *Id.* at 16.

[63] *Id.* at 80.

[64] *Id.* at 97-104.

[65] *Id.* at 100.

[66] Sec. 14 — No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

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

[68] *Id.* at 105-111.

thirty years as to be entitled to a grant from the government;"[69] and therefore, "the plan Psu-04-008565 of appellee covering the said land, being ineffective, could not render nugatory the actual occupation of appellants and should be cancelled."[70] It gave weight to the final Decision on the earlier mentioned ejectment case that favored appellants.[71]

Petitioners filed a Motion for Reconsideration[72] of the Resolution on 22 April 2004 and an Addendum[73] to the motion on 7 May 2004. When their motion was denied,[74] they filed a Petition for Review[75] with the CA.

***Petition to the CA and its Ruling***

The CA denied the Petition and the subsequent Motion for Reconsideration.[76] The appellate court said that the OP did not err when the latter entertained the spouses Ronulo's appeal and subsequent Motion for Reconsideration.[77] The CA further said that since the main issue was actual possession of the disputed land, the OP merely corrected its previous error in issuing the assailed Resolution dated 24 March 2004.[78]

***Petition before this Court***

On 4 June 2009, the instant Petition was filed assailing the CA Decision and Resolution.

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[69] *Id.* at 111.

[70] *Id.*

[71] *Id.* at 111.

[72] *Id.* at 112-118.

[73] *Id.* at 119-120.

[74] *Id.* at 122.

[75] *Id.* at 123-163.

[76] *Supra* notes 2 and 3.

[77] *Rollo*, p. 62.

[78] *Id.* at 64.

***Decision of the Court in G.R. No. 183589***

On 25 June 2014, the Court issued its Decision in *Lim*[79] (G.R. No. 183589) involving the Complaint for Quieting of Title, Recovery of Possession, and Damages filed by the spouses Ligon. It affirmed the indefeasibility of the spouses Ligon's title over the **entire 9,478-square-meter property**, saying that petitioner Lim failed to adduce evidence to overturn the ruling of both the RTC and the CA. In that ruling, the Court said that the findings of the DENR Regional Executive Director, as affirmed by the OP in the instant case, did not operate as *res judicata* in the Complaint for quieting of title that would have the effect of cancelling the title of the spouses Ligon.[80] The Court held:[81]

While there is identity of parties and subject matter between the instant case and the matter before the DENR and later the OP, the causes of action are not the same. The present case arose from a case for quieting of title where the plaintiff must show or prove legal or equitable title to or interest in the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. Without proof of such legal or equitable title, or interest, there is no cloud to be prevented or removed. The administrative proceedings before the DENR and now the OP, on the other hand, were instituted on behalf of the Director of Lands, in order to investigate any allegation of irregularity in securing a patent and the corresponding title to a public land under Section 91[82] of the Public Land Act, x x x.

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[79] *Supra* note 54.

[80] *Id.*

[81] *Id.*

[82] Sec. 91. The statements made in the application shall be considered as essential conditions and parts of any concession, title, or permit issued on the basis of such application, and any false statement therein or omission of facts altering, changing, or modifying the consideration of the facts set forth in such statements, and any subsequent modification, alteration or change of the material facts set forth in the application shall *ipso facto* produce the cancellation of the concession, title, or permit granted. It shall be the duty of the Director of Lands, from time to time and whenever he may deem it advisable, to make the necessary investigations for the purpose

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To be sure, even if there was an identity of the issues involved, there still would have been no bar by prior judgment or conclusiveness of judgment since the March 24, 2004 Resolution of the OP has not reached finality — it being the subject of an appeal by respondents Spouses Ligon under CA — G.R. SP No. 85011. Furthermore, in terms of subject matter, the property involved in the administrative proceedings is a 1,000-square meter tract of land over which petitioners' alleged right of possession could ripen into ownership. On the other hand, the instant case involves the issue of the ownership or the validity of the title of respondents over the entire 9,478-square meter tract of land where petitioners claim to have enjoyed open, continuous, exclusive, and notorious possession for more than thirty years over a 1,000-square meter portion thereof.

**THE ISSUES**

The issues in this case are as follows:

1. Whether or not the respondents' second Motion for Reconsideration of the Decision of the DENR Secretary tolled the period of appeal to the OP; and

2. Whether or not the CA failed to resolve the following issues:

A. The OP erred in reversing the Decision of the DENR Secretary.

B. The validity of the DENR Secretary's finding that the Order of Regional Director Principe is a collateral attack on petitioners' title.

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of ascertaining whether the material facts set out in the application are true, or whether they continue to exist and are maintained and preserved in good faith, and for the purposes of such investigation, the Director of Lands is hereby empowered to issue *subpoenas* and *subpoenas duces tecum* and, if necessary, to obtain compulsory process from the courts. In every investigation made in accordance with this section, the existence of bad faith, fraud, concealment, or fraudulent and illegal modification of essential facts shall be presumed if the grantee or possessor of the land shall refuse or fail to obey a *subpoena* or *subpoena duces tecum* lawfully issued by the Director of Lands or his authorized delegates or agents, or shall refuse or fail to give direct and specific answers to pertinent questions, and on the basis of such presumption, an order of cancellation may issue without further proceedings.

### THE RULING OF THE COURT

The Petition has no merit.

**I**

On the first issue raised, petitioners argue that the CA erred in finding that the second Motion for Reconsideration filed by respondents before the DENR Secretary was valid and thus tolled the period of appeal to the OP.[83] They say that the CA wrongly based its conclusion on the alleged declaration in *Spouses Ligon*[84] that OCT No. OP-1808 issued in the name of petitioner Fernandez, the derivative title of the spouses Ligon's TCT No. TP-1792, was obtained through fraud and misrepresentation, having been issued during the pendency of DENR Case No. 5516 (and 5102).[85] They insist that no such fraud or misrepresentation was mentioned in the Decision of the MTC, the RTC, or the CA to warrant the acceptance of the second Motion for Reconsideration.[86] They point out that what the courts relied upon in deciding in favor of Lim in the ejectment case was the finding that the Order of Director Principe in DENR Case No. IV-5516 was already final.[87] They cite relevant portions of the MTC Decision, to wit:[88]

> That the Ronulos have possession of subject property over and above that of Felicisimo Fernandez is anchored on the affirmation thereof by the DENR in its cited order dated October 9, 1995 x x x the dispositive portion of which states —
>
> > WHEREFORE, premises considered and finding the protest of Spouses Isaac and Concepcion Ronulo to be meritorious, the plan Psd-04-0085565 approved in the name of Tomas Fernandez is hereby, as it is, ordered CANCELLED and whatever amount paid in account thereof forfeited in favor of the

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[83] *Rollo*, p. 17.

[84] *Supra* note 30.

[85] *Rollo*, pp. 21-22, 61.

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

[87] *Id.* at 22.

[88] *Id.*

> Government. Consequently, the aforementioned spoused Ronulo are hereby advised to cause the survey and to file the appropriate public land application over the land actually possessed and occupied by them.

Per certification dated March 5, 1996, issued by the same office, the aforecited order had become final and executory, there being no appeal filed thereof. x x x.

Petitioners argue that the basis of the MTC Decision — which was subsequently affirmed by the RTC, CA, and this Court — was erroneous. They contend that Director Principe's Order, being the subject of the case at bar, has yet to become final.[89] Hence, they say that the second Motion for Reconsideration was not based on indubitable grounds and should not have tolled the appeal.[90]

Petitioners further contend that the second Motion for Reconsideration was not filed under any extraordinary circumstance to warrant a liberal interpretation of the rules and a waiver of the procedural proscription against the filing thereof.[91] Citing various cases,[92] they stress that (1) procedural rules are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party;[93] (2) justice is to be administered according to the rules in order to obviate arbitrariness, caprice, or whimsicality;[94] (3) rules of procedure are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial and extrajudicial proceedings;[95] (4) procedural rules are not to be belittled or

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[89] *Id.* at 25.

[90] *Id.*

[91] *Id.*

[92] *Id.* at 25-27.

[93] *Santos v. Court of Appeals*, G.R. No. 92862, 4 July 1991, 198 SCRA 806.

[94] *Vasco v. Court of Appeals*, 171 Phil. 673 (1978).

[95] *Sps. Galang v. Court of Appeals*, 276 Phil. 748 (1991); *Tupas v. Court of Appeals*, 271 Phil. 268 (1991); *Santos v. Court of Appeals, supra; Limpot v. Court of Appeals*, 252 Phil. 377 (1989).

dismissed simply because their nonobservance may have resulted in prejudice to a party's substantive rights, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve litigants of an injustice not commensurate with the degree of their thoughtlessness in not complying with the procedure prescribed;[96] and (5) liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances.[97]

In light of these arguments, petitioners conclude that the CA should have ruled that the appeal of respondents to the OP was not interposed within the reglementary period, resulting in the finality of the DENR Secretary's Decision.[98]

On their end, respondents aver that filing a second Motion for Reconsideration is not absolutely prohibited and is allowed in exceptionally meritorious circumstances, as in the instant case. They claim that this case is imbued with utmost public interest, since it involves the integrity and validity of a public land grant and, as such, warrants a liberal interpretation of the rules. They cite *Allied Banking Corporation and Pacita Uy v. Spouses David and Zenaida Eserjose*,[99] in which the Court held that "[t]he period for appeal set by law must be deemed mandatory save for the most extraordinary of circumstances."[100]

Respondents assert that petitioners' Motion for Reconsideration before DENR Region IV and appeal filed with the DENR Secretary were the ones actually time-barred. They said petitioners' counsel received the Order on 20 October 1995, but filed the Motion for Reconsideration only on 20 November 1995. They also claim that petitioners' counsel received the notice of the denial of the Motion for Reconsideration on 3 February 1996, but filed an

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[96] *Limpot v. Court of Appeals, supra.*

[97] *Garbo v. Court of Appeals*, 327 Phil. 780 (1996).

[98] *Rollo*, pp. 27-28.

[99] *Allied Banking Corporation and Pacita Uy v. Spouses David and Zenaida Eserjose*, 484 Phil. 159 (2004).

[100] *Rollo*, pp. 428-429.

appeal only on 4 March 1996. They present the Certificate of Finality dated 5 March 1995 on file with the DENR Region IV Office to prove that the Order of Director Principe had long become final and executory.[101]

Both parties presented allegations that the other committed technical procedural lapses in the course of this case. Clearly they are aware that observance of the rules of procedure should not be lightly estimated, as the Court considers it a matter of public policy.[102] Indeed, the rules were conceived and promulgated not only to effectively dispense justice,[103] but also to fully protect the rights of the parties.[104]

Courts, however, are not shorn of the discretion to suspend the rules or except a particular case from their operation when their rigid application would frustrate rather than promote justice.[105] The policy is to maintain a healthy balance between the strict enforcement of procedural laws and the guarantee that litigants are given the full opportunity for a just and proper disposition of their cause. In some cases, it is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice. In those cases, in which technicalities are dispensed with, the courts do not mean to undermine the force and effectivity of the periods set by law. When the courts do so, it is because of the existence of a clear need to prevent the commission of a grave injustice.[106]

Public interest and the interest of substantial justice require that the instant case be resolved on the merits, and not on mere technical grounds, for the following reasons:

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[101] *Id.* at 436-438.

[102] *Olizon v. Central Bank of the Philippines*, 120 Phil. 355 (1964).

[103] *De Jesus v. Office of the Ombudsman*, 562 Phil. 502 (2007), citing *Coronel v. Desierto*, 448 Phil. 894 (2003).

[104] *Id.*

[105] *Id.*

[106] *Tacloban II Neighborhood Association, Inc. v. Office of the President*, 588 Phil. 177 (2008).

1. DENR Regional Director Principe's findings are in direct conflict with those of the DENR Secretary; hence, there is a need to review the arguments raised and evidence submitted by the parties.

2. Petitioners benefitted from the relaxation of the rules when they were able to file a Motion for Reconsideration before the DENR Regional Office and an appeal before the DENR even after the prescribed period had lapsed; they cannot question the same liberality afforded to respondents by the OP.

3. The present controversy involves both parties' sacrosanct right to property, which is protected by the constitutional provision that "[n]o person shall be deprived of life, liberty, or property without due process of law."[107]

Moreover, it bears stressing that rules of procedure are construed liberally in proceedings before administrative bodies. In *Department of Agrarian Reform v. Uy,*[108] the second Motion for Reconsideration filed by the respondent before the OP was allowed, even if it was considered *pro forma* or not exceptionally meritorious. The Court reasoned:

> [T]echnical rules of procedure imposed in judicial proceedings are unavailing in cases before administrative bodies. Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. Rules of procedure are not to be applied in a very rigid and technical manner, as they are used only to help secure and not to override substantial justice.

All told, the CA was correct in validating the OP's decision to give due course to respondents' appeal of the DENR Secretary's Order on the basis of the second Motion for Reconsideration.

**II**

Petitioners raise as the second ground for this Petition the argument that the CA failed to resolve the following issues:

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[107] Constitution, Article III, Section 1.

[108] 544 Phil. 308 (2007).

(1) whether the OP erred in reversing the Decision of the DENR Secretary; and (2) whether the finding of the DENR Secretary that the Order of Director Principe was a collateral attack on their title was valid.

It is noteworthy to emphasize at this point that the jurisdiction of this Court in a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law. Factual questions are not the proper subject of an appeal by *certiorari*.[109]

A question of law is present when there is a doubt or difference in opinion as to what the law is on a certain set of facts, while a question of fact exists when a doubt or difference arises as to the truth or falsehood of the alleged facts.[110] Unless the case falls under any of the recognized exceptions, the Court is limited solely to a review of legal questions.[111]

The allegation of petitioners that there was an omission on the part of the CA when it failed to resolve the issues they had put forth obviously involves a factual question, which is outside this Court's authority to act upon.

At any rate, this Court finds that the CA has actually ruled upon the issues mentioned by petitioners. The CA declared that the OP did not err in reversing the Decision of the DENR Secretary. Quoted hereunder is the relevant portion of the appellate court's Decision:

> Considering the foregoing and the fact that the issue in this case is actual possession of the disputed land, We hold and so conclude that the Office of the President just corrected its previous error when it reconsidered and set aside its June 27, 2003 Resolution and issued the assailed March 24, 2004 Resolution.[112]

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[109] *Miro v. Vda. de Erederos*, G.R. Nos. 172532 & 172544-45, 20 November 2013.

[110] *Id.*

[111] *Id.*

[112] *Rollo*, p. 64.

The CA likewise resolved, albeit indirectly when it affirmed the OP's factual findings, the question of whether the Order of Director Principe was a collateral attack on petitioners' title. It particularly cited the following conclusions of the OP:

> Anent the Free Patent application of appellee (herein petitioners), suffice it to state that the same was never pursued from the time of its filing in 1970 and the approved plan under Psu-04-008565 did not confer any title to the land to appellee in the light of the actual occupation of the land by appellants (herein respondents).
>
> x x x x x x x x x
>
> Summing up, it has been established that appellants have been the actual occupants of the disputed land since 1953 or for more than thirty years as to be entitled to a grant from the government. Therefore, the plan under Psu-04-008565 of appellee covering the said land, being ineffective, could not render nugatory the actual occupation of appellants and should be cancelled.[113]

By agreeing to these findings of fact, the CA impliedly refused to recognize the title to the property held by petitioners. Since it deemed that they had no title to speak of, the issue of collateral attack was consequently answered in the negative. This view is in line with the principle that "a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion and upon which such conclusion is based is as effectually passed upon as the ultimate question which is finally solved."[114]

In their Motion for Reconsideration of the CA Decision, petitioners also highlighted the appellate court's alleged failure to resolve these two particular questions. The fact that the CA denied the motion on the ground that the arguments advanced therein had already been considered and passed upon in its Decision

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[113] *Rollo*, p. 64.

[114] *Concepcion v. Agana*, 335 Phil. 773, 783 (1997), citing *Lopez v. Reyes*, 166 Phil. 641, 650 (1977); *Smith Bell and Company (Phils.), Inc. v. Court of Appeals*, 274 Phil. 472, 482 (1991).

further indicates that the appellate court has fully covered and resolved the issues in this case.

On a final note, this Court finds that the Decision of the OP merely affirmed the Order of Director Principe. Contrary to petitioners' claim, the OP did not in any way grant unto respondents possession of the entire 9,748 square meters of property registered under petitioners' name. The CA upheld the OP Decision also without any such pronouncement. To be clear, the subject matter of this case involves only the 1,000 square meters of land that respondents have long possessed and occupied, but that has been included as part of petitioner's property.

**WHEREFORE,** premises considered, this Court **DENIES** the Petition. The Decision and Resolution of the Court of Appeals dated 22 December 2008 and 17 April 2009, respectively in C.A.-G.R. SP. No. 85011, are hereby **AFFIRMED**. Cost against petitioners.

**SO ORDERED.**

*Leonardo-de Castro, Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 198925. July 13, 2016]

**SPOUSES ARCHIBAL LATOJA and CHARITO LATOJA,** *petitioners, vs.* **HONORABLE ELVIE LIM, Presiding Judge, Branch 1, Regional Trial Court, Borongan, Eastern Samar, ATTY. JESUS APELADO, Register of Deeds, Borongan, Eastern Samar, ALVARO CAPITO, as Sheriff, Branch 2, Regional Trial Court, Borongan, Eastern Samar, and TERESITA CABE, represented by ADELINA ZAMORA,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; RULES OF PROCEDURE; STRICT ADHERENCE THERETO MUST NOT GET IN THE WAY OF ACHIEVING SUBSTANTIAL JUSTICE.—** We note some procedural lapses in the Petition filed before Us. The Court enjoins the observance of the established policy on the hierarchy of courts. Here, petitioners filed the present Petition for *Certiorari* directly before this Court instead of the CA. Such a course of action ought to be disallowed. Moreover, it is a rule that a motion for reconsideration of an assailed order is a condition precedent before filing a petition for *certiorari* under Rule 65. In the present case, petitioners failed to file a motion for reconsideration of the Order granting the Motion for the Issuance of Writ of Possession, thereby depriving RTC-Br. 2 of the opportunity to correct an error it might have unwittingly committed. Despite these procedural lapses, the Court deems it prudent to provide a resolution of the substantial issues raised by the parties. The resolution of these issues is pursuant to the policy that cases should as much as possible be resolved on the merits, and not on technicalities. Strict adherence to rules of procedure must not get in the way of achieving substantial justice. The Court, on compelling and meritorious grounds, has overlooked procedural flaws, such as (1) lack of a motion for reconsideration prior to a Rule 65 petition; (2) non-exhaustion of administrative remedies; (3) a disregard of the hierarchy of courts; and (4) an erroneous service of a petition on the opposing party, instead of the counsel of record. Indeed, the exceptional circumstances in the instant case demand that the Court forego a rigid application of the technicalities, so as to allow the parties to determine their respective rights and liabilities under the law. In particular, we take note of the fact that the case involved here has been dragging on for years, with the consolidation case commencing as early as 1999. Further, the merits of the present case x x x justify the relaxation of procedural technicalities.

2. **ID.; ACTIONS; WRIT OF POSSESSION; WHEN ISSUED.—** Jurisprudence provides only these four instances when a writ of possession may issue: (1) land registration proceedings; (2) extrajudicial foreclosure of mortgage of real property; (3) judicial foreclosure of property, provided that the mortgagor has possession, and no third party has intervened;

and (4) execution sales. Here, respondent Cabe sought the writ as a consequence of the trial court's Decision ordering the consolidation of the title over the subject property and vesting absolute ownership thereof in her name. Since the instant case clearly does not fall among the four instances enumerated above, the issuance of the Writ of Possession was not proper.

3. **ID.; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT IN FAVOR OF OWNERSHIP, DOES NOT NECESSARILY INCLUDE POSSESSION AS A NECESSARY INCIDENT, FOR POSSESSION AND OWNERSHIP ARE DISTINCT LEGAL CONCEPTS.—** The consolidation of title prescribed in Article 1607 of the Civil Code is merely for the purpose of registering and consolidating title to the property in case of a vendor *a retro's* failure to redeem. Here, the trial court's Decision (affirmed by both the CA and the SC) merely resolved the issue of consolidation of ownership over the subject property. Possession and ownership are distinct legal concepts. A judgment in favor of ownership, therefore, does not necessarily include possession as a necessary incident. To further seek possession of the land would violate the established rule that a writ of execution must conform to the dispositive portion of the decision it seeks to enforce and cannot vary the terms thereof. Otherwise, the execution is void. Since the Writ of Possession in this case was issued as part of the execution process, it is likewise subject to this rule. Consequently, as the judgment being executed does not involve a disposition on Cabe's right of possession, the Writ of Possession itself is a patent nullity.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES*; PACTO DE RETRO* SALE; THE TITLE AND OWNERSHIP OF THE PROPERTY SOLD ARE IMMEDIATELY VESTED IN THE VENDEE *A RETRO* WHO HAS THE RIGHT TO ITS IMMEDIATE POSSESSION, UNLESS OTHERWISE AGREED UPON.—** Judge Lim overlooked the nature of the *Pacto de Retro* sale entered into by Cabe and Cardona II. It is basic that in a *pacto de retro sale*, the title and ownership of the property sold are immediately vested in the vendee *a retro.* As a result, the vendee *a retro* has a right to the immediate possession of the property sold, unless otherwise agreed upon. Therefore, the right of respondent Cabe to possess the subject property must be founded on the terms of the *Pacto de Retro* Sale itself, and not on the

Decision in the consolidation case. It would be erroneous to conclude that she is entitled as a matter of right to possession of the subject property by virtue of the Decision on consolidation which has become final and executory. Judge Lim committed grave abuse of discretion in issuing the Order granting Cabe's motion for the issuance of a writ of possession, as he went against basic law and established jurisprudence.

## APPEARANCES OF COUNSEL

*Elmer C. Solidon* for petitioners.
*Abesamis Law Offices* for private respondent Teresita Cabe.

## D E C I S I O N

**SERENO, *C.J.*:**

This is a Petition[1] for Certiorari, Prohibition, and Mandamus under Rule 65 of the 1997 Revised Rules of Court assailing the Order[2] in Civil Case No. 3488 issued by Hon. Elvie P. Lim (Judge Lim) as acting presiding judge of Regional Trial Court Branch 2 (RTC-Br. 2), Borongan, Eastern Samar. The assailed Order granted the Motion for Issuance of Writ of Possession in favor of respondent Teresita Cabe over the property covered by Original Certificate of Title (OCT) No. 41.

The Petition likewise prays for the issuance of a preliminary injunction and/or temporary restraining order (TRO) to enjoin the execution of the assailed Order.

### THE ANTECEDENT FACTS

On 21 May 1997, respondent Cabe, together with Donato A. Cardona II (Cardona II), executed a Deed of Sale with *Pacto de Retro*[3] over a parcel of land covered by OCT No. 41, registered under the "Heirs of Donato Cardona represented by Jovita T.

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[1] *Rollo*, pp. 3-19.

[2] *Id.* at 20-21; Order dated 29 September 2011.

[3] *Rollo*, pp. 177-178.

Cardona."[4] The sale was with the conformity of Jovita Cardona and spouses Rhodo and Myrna Cardona (Spouses Cardona), who are Cardona II's grandmother and parents, respectively.

For failure of Cardona II to repurchase the property from her within one year as agreed upon in the deed, Cabe filed a Petition for Consolidation of Ownership[5] over OCT No. 41 pursuant to Article 1607 of the Civil Code.[6] Docketed as Civil Case No. 3488 (consolidation case) and assigned to RTC-Br. 2, the Petition was granted by the trial court through a Decision dated 20 May 2002.[7]

Cardona II questioned the trial court's Decision by filing with the Court of Appeals (CA) a Rule 65 Petition for *Certiorari*[8] which was dismissed by the CA.[9] Cardona II further appealed to the Supreme Court, but his appeal was also denied and, on 13 July 2005, an Entry of Judgment issued.[10]

Pursuant to this Court's Resolution denying Cardona II's appeal, respondent Cabe filed a motion for execution of the RTC Decision in the consolidation case[11] which was granted.[12]

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[4] *Id.* at 22-23.

[5] *Id.* at 32-35.

[6] Art. 1607 provides: "In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Article 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

[7] *Id.* at 110-119; the decision was penned by Hon. Arnulfo O. Bugtas as Presiding Judge of RTC-Br. 2.

[8] Docketed as CA-G.R. SP No. 77370.

[9] CA Decision in CA-G.R. SP No. 77370 dated 23 June 2004, penned by CA Associate Justice Estela M. Perlas-Bernabe (now a member of this Court) and concurred in by Associate Justices Isaias P. Dicdican and Ramon M. Bato, Jr.; *rollo*, pp. 124-126.

[10] *Id.* at 128-129.

[11] *Id.* at 130.

[12] *Id.* at 137-138; the resolution was penned by Hon. Leandro C. Catalo as Presiding Judge of RTC Br. 2.

RTC-Br. 2 then issued a Writ of Execution.[13] Pursuant thereto, the Register of Deeds cancelled OCT No. 41 and issued, in lieu thereof, Transfer Certificate of Title No. 114-2011000028 under the name of respondent Cabe.[14]

Thereafter, Cabe prayed for the issuance of a Writ of Possession. This was granted through the assailed Order[15] of Judge Lim as acting Presiding Judge of RTC-Br. 2.[16] In accordance with the assailed Order, a Writ of Possession was issued in favor of Cabe.[17] Subsequently, a Notice of Demand to Vacate[18] was issued by the court sheriff of RTC-Br. 2 pursuant to the Writ of Possession.

Petitioner-spouses Archibal and Charito Latoja (Spouses Latoja) now come to us alleging grave abuse of discretion on the part of Judge Lim.[19] They allege that in 2006, this same Judge Lim rendered a Judgment by Compromise[20] in an Action for Partition of Real Properties. This action was filed by Spouses Latoja against Spouses Cardona, who are the parents of Cardona II, respondent in the consolidation case.[21] Among the properties included in the partition case was OCT No. 41,[22] the same property subject of the consolidation case. The Judgment by Compromise awarded OCT No. 41 on a 50/50 *pro indiviso* ownership to

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[13] *Id.* at 45-46; dated 22 October 2010.

[14] *Id.* at 53.

[15] Dated 29 September 2011.

[16] *Rollo*, pp. 20-21.

[17] *Id.* at 51-52.

[18] *Id.* at 50.

[19] On 28 August 2013, petitioners' counsel filed a Notice of Substitution of Party dated 2 August 2013, stating that petitioner Archibal Latoja died on 13 October 2012 and requesting that his children — Lindley Latoja, Liezl Latoja, Leslie Latoja, Archibal Latoja, Jr., and Lyndon Sixto Latoja — be considered as substitutes of their late father; *rollo*, pp. 262-263, 273.

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

[21] *Id.* at 8.

[22] *Id.* at 22-23.

Spouses Latoja and Spouses Cardona pursuant to their Compromise Agreement.[23]

Spouses Latoja contend that Judge Lim, as acting presiding judge of **RTC-Br. 2**, wrongly granted the motion for the issuance of a Writ of Possession to Cabe despite the Judgment by Compromise he had previously rendered in the partition case. Judge Lim was then the presiding judge of **RTC-Br. 1**, Borongan, Eastern Samar when he awarded half of the same property to petitioners.[24] Alleging that they are in possession of a portion of the subject property,[25] petitioners also pray for the issuance of a TRO to enjoin the implementation of the assailed Order in view of the issuance of the Notice to Vacate issued by the court sheriff.[26] In a Resolution dated 14 December 2011, this Court granted the TRO prayed for.[27]

In her Comment,[28] respondent Cabe contends that the Decision in the consolidation case had become final on 13 July 2005 after this Court dismissed the appeal of Cardona II and before the Judgment by Compromise was rendered in 2006. Therefore, Judge Lim was simply guided by the rule on the finality of judgment when he issued the assailed Order. Cabe asserts that she is therefore entitled to the writ of possession prayed for.[29]

## THE ISSUE

The crucial issue in this case is whether public respondent Judge Lim committed grave abuse of discretion when he issued the Order granting the Motion for Issuance of Writ of Possession in favor of private respondent Cabe in the consolidation case.

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

[24] *Id.* at 11.

[25] *Id.* at 194.

[26] In the Notice of Demand to Vacate, Spouses Latoja were given until 18 November 2011 to turn over the property to respondent Cabe.

[27] *Id.* at 65.

[28] *Id.* at 81-103.

[29] *Id.* at 91-92.

### THE COURT'S RULING

We grant the Petition for reasons as follows.

***The Petition warrants a relaxation of procedural rules.***

At the outset, We note some procedural lapses in the Petition filed before Us.

The Court enjoins the observance of the established policy on the hierarchy of courts.[30] Here, petitioners filed the present Petition for *Certiorari* directly before this Court instead of the CA. Such a course of action ought to be disallowed.[31]

Moreover, it is a rule that a motion for reconsideration of an assailed order is a condition precedent before filing a petition for *certiorari* under Rule 65.[32] In the present case, petitioners failed to file a motion for reconsideration of the Order granting the Motion for the Issuance of Writ of Possession, thereby depriving RTC-Br. 2 of the opportunity to correct an error it might have unwittingly committed.[33]

Despite these procedural lapses, the Court deems it prudent to provide a resolution of the substantial issues raised by the parties. The resolution of these issues is pursuant to the policy that cases should as much as possible be resolved on the merits, and not on technicalities.[34] Strict adherence to rules of procedure must not get in the way of achieving substantial justice.[35] The Court, on compelling and meritorious grounds, has overlooked

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[30] *Diocese of Bacolod v. COMELEC*, 747 Phil. 1 (2015).

[31] Although the Court, the CA, and the RTC have concurrence of jurisdiction over the issuance of writs of *certiorari*, petitioners cannot simply choose which among several courts their Petition for *Certiorari* will be filed in. (*Bañez, Jr. v. Concepcion,* 693 Phil. 399 [2012]).

[32] *Lepanto Consolidated Mining v. Lepanto Capataz Union*, 704 Phil. 10 (2013).

[33] *Estate of Salvador Serra Serra v. Heirs of Hernaez*, 503 Phil. 736 (2005).

[34] *Macedonio v. Ramo*, G.R. No. 193516, 24 March 2014.

[35] *Morillo v. People,* G.R. No. 198270, 9 December 2015.

procedural flaws, such as (1) lack of a motion for reconsideration prior to a Rule 65 petition;[36] (2) non-exhaustion of administrative remedies;[37] (3) a disregard of the hierarchy of courts;[38] and (4) an erroneous service of a petition on the opposing party, instead of the counsel of record.[39]

Indeed, the exceptional circumstances in the instant case demand that the Court forego a rigid application of the technicalities, so as to allow the parties to determine their respective rights and liabilities under the law. In particular, we take note of the fact that the case involved here has been dragging on for years, with the consolidation case commencing as early as 1999.[40] Further, the merits of the present case, as will be shown later, justify the relaxation of procedural technicalities.

***Judge Lim committed grave abuse of discretion in granting the Motion for Issuance of Writ of Possession.***

We find that Judge Lim committed grave abuse of discretion when he issued the Order for the issuance of the Writ of Possession prayed for by respondent Cabe in the consolidation case. We make this finding on grounds other than those posited by petitioners as will further be explained below.

Jurisprudence provides only these four instances when a writ of possession may issue: (1) land registration proceedings; (2) extrajudicial foreclosure of mortgage of real property; (3) judicial foreclosure of property, provided that the mortgagor has possession, and no third party has intervened; and (4) execution sales.[41]

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[36] *Republic v. Bayao*, 710 Phil. 279 (2013).

[37] *Buklod ng Kawaning EIIB v. Zamora*, 413 Phil. 281 (2001).

[38] *Republic v. Caguioa,* 704 Phil. 315 (2013).

[39] *Id.*

[40] *Rollo*, pp. 32-35.

[41] *Maglente v. Baltazar-Padilla*, 546 Phil. 472 (2007), citing *Canlas v. Court of Appeals*, 247 Phil. 118 (1988); see also *Mabale v. Alipasok,* 177 Phil. 189 (1979).

Here, respondent Cabe sought the writ as a consequence of the trial court's Decision ordering the consolidation of the title over the subject property and vesting absolute ownership thereof in her name. Since the instant case clearly does not fall among the four instances enumerated above, the issuance of the Writ of Possession was not proper.

It is apparent that Cabe availed herself of the wrong remedy in seeking possession of the property via a Writ of Possession. She contends that she is entitled as a matter of right to the issuance of the writ as she has in her favor a court judgment, a writ of execution, and a new TCT under her own name.[42] This contention lacks merit.

The consolidation of title prescribed in Article 1607[43] of the Civil Code is merely for the purpose of registering and consolidating title to the property in case of a vendor *a retro's* failure to redeem.[44] Here, the trial court's Decision (affirmed by both the CA and the SC) merely resolved the issue of consolidation of ownership over the subject property.[45] Possession and ownership are distinct legal concepts.[46] A judgment in favor of ownership, therefore, does not necessarily include possession as a necessary incident.[47]

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[42] *Rollo*, p. 91.

[43] *Supra* note 6.

[44] *Spouses Cruz v. Leis*, 384 Phil. 303 (2000).

[45] The dispositive portion of the Decision goes as follows:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of petitioner and against respondent, consolidating the title so that real property covered by Original Certificate of Title No. 41 vesting ownership upon petitioner Teresita Cabe; declaring null and void said OCT No. 41; and ordering the Register of Deeds of Easter Samar to cancel said OCT No. 41 and to issue, in lieu thereof, another Certificate of title in favor of and in the name of TERESITA CABE.

SO ORDERED." (*Rollo*, p. 119).

[46] *Heirs of Soriano v. CA*, 415 Phil. 299 (2001).

[47] *Id.*

To further seek possession of the land would violate the established rule that a writ of execution must conform to the dispositive portion of the decision it seeks to enforce and cannot vary the terms thereof.[48] Otherwise, the execution is void.[49] Since the Writ of Possession in this case was issued as part of the execution process,[50] it is likewise subject to this rule. Consequently, as the judgment being executed does not involve a disposition on Cabe's right of possession, the Writ of Possession itself is a patent nullity.

Deprived of possession, Cabe's remedy is not a Writ of Possession, but any of the available actions for the recovery of possession of real property, specifically the following: *accion interdictal*, when the dispossession has not lasted for more than one year; *accion publiciana*, when the dispossession has lasted for more than one year; or *accion reivindicatoria*, which seeks the recovery of ownership and necessarily includes possession.[51]

Judge Lim overlooked the nature of the *Pacto de Retro* sale entered into by Cabe and Cardona II. It is basic that in a *pacto de retro* sale, the title and ownership of the property sold are immediately vested in the vendee *a retro*.[52] As a result, the vendee *a retro* has a right to the immediate possession of the property sold, unless otherwise agreed upon.[53]

Therefore, the right of respondent Cabe to possess the subject property must be founded on the terms of the *Pacto de Retro* Sale itself, and not on the Decision in the consolidation case. It would be erroneous to conclude that she is entitled as a matter of right to possession of the subject property by virtue

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[48] *Green Acres Holdings, Inc. v. Cabral,* 710 Phil. 235 (2013).

[49] *Id.*

[50] *Rollo*, p. 20.

[51] *Suarez v. Emboy, Jr.,* G.R. No. 187944, 12 March 2014, citing *Spouses Valdez v. Court of Appeals*, 523 Phil. 39 (2006).

[52] *Solid Homes, Inc. v. CA*, 341 Phil. 261 (1997).

[53] *Id.*

of the Decision on consolidation which has become final and executory.[54]

Judge Lim committed grave abuse of discretion in issuing the Order granting Cabe's motion for the issuance of a writ of possession, as he went against basic law and established jurisprudence.

It must be emphasized that this Petition is confined to the resolution of Judge Lim's authority to order the issuance of the assailed Writ of Possession. Any contention raised as to the validity of the judgments, contracts, or titles involved in this case may be properly threshed out by the parties in a proper action for that purpose.

**WHEREFORE,** the Petition for *Certiorari* under Rule 65 is **GRANTED**. Hereby **SET ASIDE** are the (a) Order dated 29 September 2011 issued by Hon. Elvie P. Lim granting the Motion for Issuance of Writ of Possession; (b) the Writ of Possession dated 25 October 2011; and (c) the Notice of Demand to Vacate dated 25 October 2011. Accordingly, the Court's Temporary Restraining Order dated 14 December 2011[55] is hereby made **PERMANENT**.

**SO ORDERED.**

*Leonardo-de Castro, Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[54] *Rollo*, p. 20.

[55] *Id.* at 65-66.

**THIRD DIVISION**

[G.R. No. 200537. July 13, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RODRIGO QUITOLA *y* BALMONTE,** *accused-appellant.*

**SYLLABUS**

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; THE PROHIBITIONS THEREIN ARE PRIMARILY ADDRESSED TO THE STATE AND ITS AGENTS AND NOT BETWEEN PRIVATE INDIVIDUALS.—** We agree with the Sol Gen. that extra-judicial confession given by accused-appellant during the interview conducted by the field reporter is admissible in evidence. Accused-appellant asserts that the confession was involuntarily given and was made under extreme fear because he was interviewed while he was inside the detention cell and while surrounded by police officers. We are not persuaded. That the confession was given without the assistance of counsel and was therefore involuntary is immaterial. We have consistently held that the Bill of Rights does not concern itself with relations between private individuals. The prohibitions therein are primarily addressed to the State and its agents; thus, accused-appellant's confession to field reporter Tacason is not covered by Section 12(1) and (3) of Article III of the Constitution. Furthermore, accused-appellant would have this Court believe that the confession was given under a tense and fearful atmosphere, similar to that of a custodial investigation. In a previous case with similar circumstances, We observed that the presence of the police officers did not exert any undue pressure or influence on the accused, coercing him into giving his confession. The interview was not in the nature of a custodial investigation as the response of the accused-appellant was made in answer to questions asked by the reporter and not by the police. There is no showing that the field reporter colluded with the police authorities to elicit inculpatory evidence against accused-appellant. Neither is there anything on record which suggests that the reporter was instructed by the police to extract information from him. Moreover, accused-appellant

could have refused to be interviewed, but instead, he agreed. A review of the taped interview would show that he answered the questions freely and spontaneously.

2. **REMEDIAL LAW; EVIDENCE; CONFESSION; THE VOLUNTARINESS OF A CONFESSION MAY BE INFERRED FROM ITS LANGUAGE, SUCH THAT WHEN THE CONFESSION EXHIBITS NO SIGN OF SUSPICIOUS CIRCUMSTANCES TENDING TO CAST DOUBT UPON ITS INTEGRITY, IT MAY BE CONSIDERED VOLUNTARY.—** As can be gleaned from both the taped interview and the testimony of the reporter, accused-appellant's confession was replete with details describing the manner by which the crime was committed. This Court has held that "the voluntariness of a confession may be inferred from its language such that if, upon its face, the confession exhibits no sign of suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could be supplied only by the accused reflecting spontaneity and coherence which, psychologically, cannot be associated with a mind to which violence and torture have been applied, it may be considered voluntary."

3. **ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; EXTRA-JUDICIAL CONFESSION; MAY NOT BE A SUFFICIENT GROUND FOR CONVICTION, UNLESS CORROBORATED BY EVIDENCE OF *CORPUS DELICTI* WHICH MAY BE PROVEN THROUGH CIRCUMSTANTIAL EVIDENCE.—** Rule 133, Section 3 of the Rules of Court provides that an extra-judicial confession shall not be a sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*. In the case at bar, the confession made by accused-appellant was corroborated by other evidence. While there was no prosecution witness who positively identified accused-appellant as the assailant, his culpability was nonetheless proven through circumstantial evidence. Time and again, this Court has held that direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt. The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would, in many cases, result in setting felons free and deny proper protection to the community.

4. **ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO SUSTAIN A CONVICTION.—** Circumstantial evidence is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived x x x [are] proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS THEREON MADE BY THE TRIAL COURT ARE ENTITLED TO GREAT WEIGHT AND RESPECT BECAUSE THE TRIAL COURT IS IN A BETTER POSITION TO ASSESS THE SAME.—** Well established is the rule that factual findings made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same. We agree with the lower courts that the circumstances proven by the prosecution lead to the inescapable conclusion that accused-appellant is the author of the crime.

6. **ID.; ID.; ALIBI; TO PROSPER AS A DEFENSE, THE ACCUSED MUST PROVE THAT HE WAS AT SOME OTHER PLACE AT THE TIME THE CRIME WAS COMMITTED AND THAT IT WAS IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS CRIMINIS* AT THE TIME OF THE ALLEGED CRIME.—** "[F]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise physically impossible for him to be at the *locus criminis* at the time of the alleged crime." In the instant case, accused-appellant failed to prove and demonstrate the physical impossibility of his being at the scene of the crime at the approximate time of its commission.

7. **CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS.—** To warrant a conviction for Robbery with Homicide, the prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on occasion of the robbery or by reason thereof, the

crime of homicide, which is used in a generic sense, was committed.

8. **ID.; ID.; ID.; THE ROBBERY MUST BE ESTABLISHED CONCLUSIVELY AS ANY OTHER ESSENTIAL ELEMENT OF THE CRIME, AND THE INTENT TO COMMIT ROBBERY MUST PRECEDE THE TAKING OF HUMAN LIFE.—** In proving Robbery with Homicide, it is necessary that the robbery itself be established conclusively as any other essential element of the crime. In the instant case, the testimonies of prosecution witnesses, the extra-judicial confession of accused-appellant and the Investigation Report of Urdaneta City Police Station support the charge of the component offense of Robbery. It should also be noted that in Robbery with Homicide, the original criminal design of the malefactor is to commit robbery; thus, the intent to commit robbery must precede the taking of human life. In previous cases, this Court had occasion to explain that intent to rob is an internal act but it may be inferred from proof of violent unlawful taking of personal property, and when the fact of asportation has been established beyond reasonable doubt, conviction is justified even if the subject property is not presented in court. "After all, the property stolen may have already been abandoned, thrown away or destroyed by the robber." Considering that the motive for robbery can exist regardless of the exact amount or value involved, the prosecution is not expected to prove the actual value of the property stolen. More importantly, accused-appellant's extra-judicial confession glaringly reveals his intention to rob the deceased.

9. **CIVIL LAW; CIVIL CODE; DAMAGES; TEMPERATE DAMAGES; AWARDED WHEN THE AMOUNT OF ACTUAL DAMAGES CANNOT BE DETERMINED BECAUSE NO SUBSTANTIATING DOCUMENTARY EVIDENCE WAS PRESENTED IN COURT.—** Actual damages were not awarded by the trial court for the unfortunate reason that the prosecution failed to adduce evidence to support an award for actual damages. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed. Hence, the rulings on temperate damages apply. Given that the amount of actual damages for funeral expenses cannot be determined because no substantiating

documentary evidence was presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**PEREZ, *J*.:**

Before this Court is an appeal of the May 13, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 04237 affirming the October 21, 2009 Decision[2] of the Regional Trial Court (RTC) of Urdaneta City, Pangasinan, Branch 47 in Crim. Case No. U-15476, finding accused-appellant Rodrigo Quitola *y* Balmonte (accused-appellant) guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide as defined and penalized under Article 294, sub-paragraph (1) of the Revised Penal Code.

On March 19, 2008, an Information[3] for the special complex crime of Robbery with Homicide was filed against accused-appellant, to wit:

"That on or about March 15, 2008 at Nice Place Compound, Bgy. Poblacion, [Urdaneta City,] Pangasinan, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a bladed weapon, with intent to gain by means of force and violence, did then and there willfully, unlawfully and feloniously *take, steal and rob* **Maria Fe Valencia *y* Supan** her *cash money amounting to PHP6,000.00, one (1) Nokia Cellphone and assorted jewelries* against her will, and by reason or on the occasion of the robbery, accused

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Stephen C. Cruz, concurred by Associate Justices Isaias P. Dicdican and Socorro B. Inting.

[2] CA *rollo*, pp. 19-27; penned by Judge Meliton G. Emuslan.

[3] Records, p. 1.

with intent to kill, did, then and there willfully, unlawfully and feloniously with abuse of superior strength and cruelty *[stabbed] to death* said Maria Fe Valencia y Supan, inflicting upon her *multiple stab wounds*, to the damage and prejudice of her heirs.

Contrary to Art. 294, par. 1, Revised Penal Code as amended by R.A. 7659."[4]

On arraignment, accused-appellant entered a plea of GUILTY.[5] However, during the scheduled hearing for the presentation of the prosecution's evidence, accused-appellant withdrew his earlier plea and entered a plea of NOT GUILTY.[6] Trial on the merits ensued thereafter.

**The Facts**

The antecedent facts culled from the Appellee's Brief[7] and the records of the case are summarized as follows:

On March 15, 2008, the lifeless body of Maria Fe Valencia y Supan was found inside her rented room at Nice Place Compound, Bgy. Nancayasan, Urdaneta City, Pangasinan.[8] Based on the joint investigation conducted by P/Supt. Regis, Sr., PO2 Ramos and their team, it was determined that the victim suffered several stab wounds on her chest, right hand, left elbow, neck and back. The initial investigation conducted disclosed that the victim entered the room at about 10:00 in the evening of March 14, 2008, as recorded in the logbook of on duty security guard, Rodrigo Quitola. The investigation also revealed that some of her personal belongings were missing.[9] The investigating team also found a broken knife with blood stains, uprooted hair strands of the victim, other hair strands of unknown origin, and blood stains on the walls and floor.[10]

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[4] *Id.*

[5] *Id.* at 48.

[6] *Id.* at 70.

[7] CA *rollo*, pp. 70-88.

[8] TSNs, October 9, 2008, pp. 6-7 and November 6, 2008, p. 7.

[9] *Supra* note 3 at 5; Exhibit "K".

[10] *Id.* at 35-37.

In the course of the follow-up investigation, Police Officer 2 Herminigildo Ramos (PO2 Ramos) discovered that accused-appellant, who happened to be the outgoing security guard of the Nice Place Compound on March 15, 2008, was seen by one Chat Siquig Baculad (Baculad). The witness, a coffee vendor, narrated that at around 5:30 in the morning, the accused-appellant bought a cup of coffee from her. She noticed that the latter's right arm was covered and when she asked him about it, he merely said he had an accident. According to the witness, accused-appellant asked for her help in packing his and his pregnant wife's clothes as they were leaving the city, but she declined. The witness left the compound and returned after a couple of hours. Upon her return, she chanced upon accused-appellant and his wife boarding a black car, allegedly owned by Maria Fe Valencia (Valencia), with all their belongings already loaded.

Upon finding out that accused-appellant, the security guard on duty, was nowhere to be found during the initial investigations, the police investigators proceeded to his rented room in Camanang, Urdaneta City. When they got there, the room was already abandoned. Convinced that accused-appellant was a possible suspect, the policemen conducted further investigations. Accused-appellant's relatives from Natividad, Pangasinan averred no knowledge regarding the whereabouts of accused-appellant. On September 8, 2008, accused-appellant was eventually arrested in Aklan.

On September 10, 2008, accused-appellant was interviewed by Joana Fe Tacason (Tacason), ABS-CBN field reporter. The interview was conducted inside the detention cell. During said interview, accused-appellant voluntarily relayed to Tacason that at early dawn of March 15, 2008, he was in the apartment of the deceased because he tried to borrow money from her.[11] He narrated that deceased refused to lend him money. In frustration, he got money from deceased's bag he saw lying on top of the table.[12] When asked what happened next, accused-appellant

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[11] Exhibit "U"; Video Compact Disc (VCD) of ABS-CBN, Regional Network, Dagupan City.

[12] TSN, January 29, 2009, pp. 8-10.

responded with "*Hindi ko na alam ang sumunod na nangyari*." The interview was taped and was aired the next day. The recorded interview forms part of the records of the case as Exhibit "U".

The deceased's car, a black Mitsubishi Lancer with Plate No. AEM-184, was later surrendered by Raffy Quitola (Raffy), accused-appellant's brother. Raffy claimed that the same was left in his possession by his brother, who paid him a visit on August 17, 2008 and stayed with him for about a month. Surmising that the car was related to the crime his brother was arrested for, Raffy turned over the car to the Philippine National Police (PNP) of Calamba, Laguna.[13]

Accused-appellant vehemently denied the accusation. According to accused-appellant, at around 9 o'clock in the morning of March 15, 2008, he and his wife left for Cubao, Quezon City after he had rendered duty at the Nice Place Compound the night before. Accused-appellant claimed that they were bound for Aklan for the reason that his wife wanted to give birth there. He also denied visiting his brother in Laguna. More notable is his claim that his confession before Tacason was merely prompted by fear.

**Ruling of the Regional Trial Court**

The RTC admitted the extra-judicial confession and held that the denial of accused-appellant did not overcome the overwhelming evidence of the prosecution. The court found accused-appellant guilty of the crime of Robbery with Homicide. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is rendered as follows:
>
> 1. FINDING accused RODRIGO QUITOLA *y* BALMONTE GUILTY beyond reasonable doubt of the crime of robbery with homicide, he is hereby sentenced to suffer *reclusion perpetua*.
>
> 2. ORDERING accused to pay the heirs of the deceased the amount of ₱50,000.00 as indemnity and the additional sum of ₱50,000.00 as moral damages.

[13] TSN, March 19, 2009, pp. 4-10.

Costs against the accused.

SO ORDERED.[14] (Boldface omitted)

## Ruling of the Court of Appeals

Aggrieved by the RTC decision, accused-appellant elevated the case to the CA. In an attempt to shatter the prosecution's case, accused-appellant contends that the interview was impelled by extreme fear because the same was conducted while accused-appellant was inside the detention cell and while police officers were around. In addition, the defense argues that the circumstantial evidence relied upon by the RTC were insufficient to establish accused-appellant's guilt.

The appellate court found no cogent reason to disturb the ruling of the trial court. The dispositive portion of the decision reads:

"**WHEREFORE**, the instant appeal is **DISMISSED**. The Decision dated October 21, 2009 of the Regional Trial Court of Urdaneta City, Pangasinan, Branch 47, that convicted accused-appellant Rodrigo B. Quitola for the special complex crime of **ROBBERY WITH HOMICIDE** as defined and penalized under Article 294, sub paragraph (1) of the Revised Penal Code, is hereby **AFFIRMED**.

**SO ORDERED**."[15]

In a Resolution[16] dated March 19, 2012, this Court required the parties to submit their respective supplemental briefs. Both the Solicitor General (Sol Gen.) and the accused-appellant manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.[17]

In his brief, accused-appellant assigned the following errors:

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[14] CA *rollo*, pp. 68-69.

[15] *Rollo*, p. 13.

[16] *Id.* at 20.

[17] *Id.* at 21 and 24.

"I.

THE COURT *A QUO* GRAVELY ERRED IN ADMITTING AS EVIDENCE THE ACCUSED-APPELLANT'S EXTRA-JUDICIAL CONFESSION.

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THAT THE PROSECUTION ESTABLISHED THE ACCUSED-APPELLANT'S GUILT FOR THE CRIME CHARGED BEYOND REASONABLE DOUBT."

**Our Ruling**

This Court finds no merit in the appeal for reasons to be discussed hereunder. We find no reason to deviate from the findings and conclusions of the courts below as the degree of proof required in criminal cases has been met in the case at bar.

We agree with the Sol Gen. that extra-judicial confession given by accused-appellant during the interview conducted by the field reporter is admissible in evidence. Accused-appellant asserts that the confession was involuntarily given and was made under extreme fear because he was interviewed while he was inside the detention cell and while surrounded by police officers. We are not persuaded. That the confession was given without the assistance of counsel and was therefore involuntary is immaterial. We have consistently held that the Bill of Rights does not concern itself with relations between private individuals.[18] The prohibitions therein are primarily addressed to the State and its agents; thus, accused-appellant's confession to field reporter Tacason is not covered by Section 12(1) and (3) of Article III of the Constitution. Furthermore, accused-appellant would have this Court believe that the confession was given under a tense and fearful atmosphere, similar to that of a custodial investigation. In a previous case[19] with similar circumstances, We observed that the presence of the police officers did not exert any undue pressure or influence on the accused, coercing

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[18] *People v. Domantay*, 366 Phil. 459, 474 (1999).

[19] *Id.*

him into giving his confession. The interview was not in the nature of a custodial investigation as the response of the accused-appellant was made in answer to questions asked by the reporter and not by the police. There is no showing that the field reporter colluded with the police authorities to elicit inculpatory evidence against accused-appellant. Neither is there anything on record which suggests that the reporter was instructed by the police to extract information from him. Moreover, accused-appellant could have refused to be interviewed, but instead, he agreed. A review of the taped interview[20] would show that he answered the questions freely and spontaneously. The same can also be inferred from the testimony of the field reporter, to wit:[21]

Q: And were you able to interview the suspect, Rodrigo Quitola [*y*] Balmonte, Madam Witness?
A: Yes sir.

Q: Where Madam Witness?
A: At the City Police Station of Urdaneta, sir.

Q: So when you were able to interview the accused, what did he tell you if any?
A: I asked him if we could interview him.

COURT:
Q: Was he already inside the detention jail or still outside the detention jail?
A: Inside the detention jail sir.

Q: Of PNP-Urdaneta City?
A: Yes sir.

COURT : Proceed.

ATTY. TINIO:
Q: So when the accused consented to be interviewed by you, were you able to interview the accused?
A: Yes sir.

Q: So what did the accused tell you during the course of the interview if any?
A: He told me that Madam Fe arrived at early dawn.

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[20] *Supra* note 11.

[21] *Supra* note 12.

Q: What else did he tell you?
A: He said that Madam Fe entered the house and he also entered the house.

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Q: Then after that what happened next?
A: He said that the accused was requesting Madam Fe to lend him money.

Q: What did this [Madame] Fe, the deceased tell the accused relative to his request to be extended a loan?
A: He said the deceased did not mind him.

Q: So when he told you that the deceased did not mind him, what did he tell you afterwards?
A: I asked him what did he do?

Q: And what did he tell you?
A: He said "I saw her place[d] her bag on top of the table".

Q: After that what did he tell you?
A: He said that he saw money inside the bag.

Q: When accused saw money inside the bag what else did he do and tell you during the course of interview?
A: He said he tried to get the money inside the bag but Madam Fe saw him getting the money.

Q: At that point when the accused told you that he tried getting the money and Ma Fe Valencia already saw him, what did you ask?
A: I asked him if what happened, then he told me "I do not know what happened next *dahil nagdilim na ang aking paningin*."

Q: After that what happened next?
A: Then I asked him if he really committed that?

Q: And what was the reply of the accused?
A: And he said "yes".

Q: And when he answered "yes" Madam Witness, as a Field Reporter at that time, did he answer that or say that freely or voluntarily?
A: Yes Sir.

x x x x x x x x x

As can be gleaned from both the taped interview and the testimony of the reporter, accused-appellant's confession was replete with details describing the manner by which the crime was committed. This Court has held that "the voluntariness of a confession may be inferred from its language such that if, upon its face, the confession exhibits no sign of suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could be supplied only by the accused reflecting spontaneity and coherence which, psychologically, cannot be associated with a mind to which violence and torture have been applied, it may be considered voluntary."[22] In the often cited case of *United States v. De los Santos*,[23] We stated:

> "If a confession be free and voluntary — the deliberate act of the accused with a full comprehension of its significance, there is no impediment to its admission as evidence, and it then becomes evidence of a high order; since it is supported by the presumption — a very strong one — that no person of normal mind will deliberately and knowingly confess himself to be the perpetrator of a crime, especially if it be a serious crime, unless prompted by truth and conscience."

Rule 133, Section 3 of the Rules of Court provides that an extra-judicial confession shall not be a sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*. In the case at bar, the confession made by accused-appellant was corroborated by other evidence. While there was no prosecution witness who positively identified accused-appellant as the assailant, his culpability was nonetheless proven through circumstantial evidence. Time and again, this Court has held that direct evidence is not the only matrix wherefrom a trial court may draw its conclusion and finding of guilt.[24] The rules of evidence allow a trial court to rely on circumstantial evidence to support its conclusion of guilt. At times, resort to circumstantial evidence is imperative since to insist on direct testimony would,

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[22] *People v. Taboga*, 426 Phil. 908, 921-922 (2002).

[23] 24 Phil. 329, 358 (1913).

[24] *Salvador v. People,* 581 Phil. 430, 439 (2008); *People v. Gallarde*, 382 Phil. 718, 733 (2000).

in many cases, result in setting felons free and deny proper protection to the community.[25] Circumstantial evidence is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived [are] proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[26] A meticulous review of the records of the case would lead Us to the conclusion that the following circumstantial evidence presented by the prosecution established beyond reasonable doubt the guilt of accused-appellant:

(1) That accused together with his wife were seen by Chat Baculad in the morning of March 15, 2008 at the Nice Place Compound in Nancatasan, Urdaneta City, boarding a black car, which she recognized as the service vehicle of the deceased;
(2) Accused abandoned his duty or work as security guard of Nice Place Compound;
(3) Accused likewise abandoned the room he was then renting in Urdaneta City;
(4) Accused was in possession and control of the service car of the deceased, which he left with his brother Raffy Quitola at the latter's residence in Calamba, Laguna after he left for Aklan with his wife; and
(5) Accused went into hiding until he was arrested in Aklan in September 2008.

The aforementioned circumstances were sufficiently proven by the prosecution witnesses and the exhibits submitted. Well established is the rule that factual findings made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the testimonies, are entitled to great weight and respect because the trial court is in a better position to assess the same.[27] We agree with the lower courts that the circumstances proven by the prosecution lead to

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[25] *People v. Uy*, 664 Phil. 483, 499-500 (2011).

[26] REVISED RULES OF COURT, Rule 133, Sec. 4.

[27] *People v. Visaya, et al.*, 405 Phil. 384, 399 (2001), citing *People v. Andales*, 379 Phil. 67, 82 (2000).

the inescapable conclusion that accused-appellant is the author of the crime. It is significant to note that accused-appellant's own brother testified that accused-appellant had custody of deceased's car. Indeed, it would be against the presumption of good faith that a prosecution witness would falsely testify against an accused,[28] particularly in this case when the witness is the accused's own brother. Moreover, no evidence of ill-motive or strained relation has been offered to indicate motive for any of the prosecution witnesses to give false testimony against accused-appellant.

Accused-appellant relies heavily on the defense of denial and alibi. "[F]or the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise physically impossible for him to be at the *locus criminis* at the time of the alleged crime."[29] In the instant case, accused-appellant failed to prove and demonstrate the physical impossibility of his being at the scene of the crime at the approximate time of its commission. According to the initial spot report[30] and the SOCO report,[31] the crime was most likely committed on the night of March 14 or in the early morning of March 15, 2008. The logbook entries[32] submitted in evidence clearly place accused-appellant within close proximity of the scene of the crime during the approximate time of its commission. Another circumstance to be considered is accused-appellant's impromptu move to Aklan. On cross-examination, accused-appellant mentioned that he and his wife had discussions about moving to another province for the birth of their child long before March 15, 2008.[33] Thus, the hasty

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[28] *People v. Zuniega*, 405 Phil. 16, 32 (2011).

[29] *People v. Altabano*, 376 Phil. 57, 64 (1999), citing *People v. Umali,* 312 Phil. 20, 27 (1995).

[30] Records, p. 35; Exhibit "J".

[31] *Id.* at 291.

[32] *Id.* at 305; Exhibit "L".

[33] TSN, September 16, 2009, p. 12.

packing up of their belongings just hours before they left for Aklan arouses suspicion. It has been ruled that flight *per se* cannot prove the guilt of an accused. However, if the same is considered in the light of other circumstances, it may be deemed a strong indication of guilt.[34] Taken altogether, these circumstances and the extra judicial confession of the accused, form an unbroken chain which leads to a fair and reasonable conclusion that accused-appellant perpetrated the crime.

We hold that the trial and appellate courts committed no error in convicting Rodrigo Quitola of Robbery with Homicide. Article 294, paragraph (1) of the Revised Penal Code, as amended by R.A. 7659, reads:

"Art. 294 — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

To warrant a conviction for Robbery with Homicide, the prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi;* and (4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed.[35] In proving Robbery with Homicide, it is necessary that the robbery itself be established conclusively as any other essential element of the crime.[36] In the instant case, the testimonies of prosecution witnesses, the extra-judicial

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[34] *Supra* note 25.

[35] *People v. Consejero*, 404 Phil. 914, 932 (2001), citing *People v. Nang*, G.R. No. 107799, April 15, 1998, 289 SCRA 16, 28.

[36] *People v. Dizon*, 394 Phil. 261, 283 (2000), citing *People v. Contega*, 388 Phil. 533, 549 (2000).

confession of accused-appellant[37] and the Investigation Report of Urdaneta City Police Station[38] support the charge of the component offense of Robbery. It should also be noted that in Robbery with Homicide, the original criminal design of the malefactor is to commit robbery; thus, the intent to commit robbery must precede the taking of human life.[39] In previous cases,[40] this Court had occasion to explain that intent to rob is an internal act but it may be inferred from proof of violent unlawful taking of personal property, and when the fact of asportation has been established beyond reasonable doubt, conviction is justified even if the subject property is not presented in court. "After all, the property stolen may have already been abandoned, thrown away or destroyed by the robber."[41] Considering that the motive for robbery can exist regardless of the exact amount or value involved, the prosecution is not expected to prove the actual value of the property stolen.[42] More importantly, accused-appellant's extra-judicial confession glaringly reveals his intention to rob the deceased.

Anent the damages awarded, We find that modification is in order. The trial court, as affirmed by the appellate court, ordered accused-appellant to pay the heirs of the deceased the amount of ₱50,000.00 as indemnity and the additional sum of ₱50,000.00 as moral damages. Pursuant to the recent jurisprudential guidelines on adjusted damages laid down by this Court in *People v. Jugueta*,[43] accused-appellant shall be held liable for ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. Actual damages were not awarded by

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[37] *Supra* note 11.

[38] Records, p. 5; Exhibit "K".

[39] *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639.

[40] *People v. De Leon*, 608 Phil. 701, 717 (2009); *People v. Puloc*, 279 Phil. 190, 197 (1991).

[41] *People v. Corre, Jr.*, 415 Phil. 386, 398 (2001).

[42] *Supra* note 40.

[43] G.R. No. 202124, April 5, 2016.

the trial court for the unfortunate reason that the prosecution failed to adduce evidence to support an award for actual damages. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed.[44] Hence, the rulings[45] on temperate damages apply. Given that the amount of actual damages for funeral expenses cannot be determined because no substantiating documentary evidence was presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded.[46]

**WHEREFORE,** the Decision dated May 13, 2011 of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. Accused-appellant Rodrigo Quitola *y* Balmonte is hereby found guilty beyond reasonable doubt of the crime of Robbery with Homicide, the penalty of which is *reclusion perpetua* in view of the absence of any modifying circumstance. Accused-appellant is also liable to pay the heirs of the victim ₱50,000.00 as temperate damages, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta,* and *del Castillo,*[*] *JJ.,* concur.

*Reyes, J.,* on wellness leave.

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[44] *People v. Salibad*, G.R. No. 210616, November 25, 2015.

[45] *People v. Werba*, G.R. No. 144599, June 9, 2004, 431 SCRA 482, 499.

[46] *Supra* note 43.

[*] Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated July 4, 2016.

**SECOND DIVISION**

[G.R. No. 202015. July 13, 2016]

**ANTONIO VALEROSO and ALLAN LEGATONA,** *petitioners, vs.* **SKYCABLE CORPORATION,** *respondent.*

**SYLLABUS**

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; EMPLOYER-EMPLOYEE RELATIONSHIP; HOW ESTABLISHED.—** To prove the claim of an employer-employee relationship, the following should be established by competent evidence: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished. Among the four, the most determinative factor in ascertaining the existence of employer-employee relationship is the "right of control test."

2. **ID.; ID.; ID.; CONTROL TEST; UNDER THIS TEST, THE PERSON FOR WHOM THE SERVICES ARE PERFORMED RESERVES THE RIGHT TO CONTROL NOT ONLY THE END TO BE ACHIEVED, BUT ALSO THE MEANS BY WHICH SUCH END IS REACHED.—** Under this control test, the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the means by which such end is reached. x x x "[G]uidelines indicative of labor law 'control' do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result." Here, we find that respondent's act of regularly updating petitioners of new promos, new price listings, meetings and trainings of new account executives; imposing quotas and penalties; and giving commendations for meritorious performance do not pertain to the means and methods of how petitioners were to perform and accomplish their task of soliciting cable subscriptions. At most, these indicate that respondent regularly monitors the result of petitioners' work but in no way dictate upon them the manner in which they

should perform their duties. Absent any intrusion by respondent into the means and manner of conducting petitioners' tasks, bare assertion that petitioners' work was supervised and monitored does not suffice to establish employer-employee relationship. x x x Evidently, the legal relation of petitioners as sales account executives to respondent can be that of an independent contractor. There was no showing that respondent had control with respect to the details of how petitioners must conduct their sales activity of soliciting cable subscriptions from the public.

3. **ID.; ID.; ID.; ID.; THE POWER OF CONTROL IS INDICATIVE OF AN EMPLOYMENT RELATIONSHIP WHILE THE ABSENCE THEREOF IS INDICATIVE OF INDEPENDENT CONTRACTORSHIP.—** In the present case, there is a written contract, *i.e.*, the Sales Agency Agreement, which served as the primary evidence of the nature of the parties' relationship. In this duly executed and signed agreement, petitioners and respondent unequivocally agreed that petitioners' services were to be engaged on an agency basis as sales account executives and that no employer-employee relationship is created but an independent contractorship. It is therefore clear that the intention at the time of the signing of the agreement is not to be bound by an employer-employee relationship. x x x Indeed, "[t]he presence of [the] power of control is indicative of an employment relationship while the absence thereof is indicative of independent contractorship." Moreover, evidence on record reveal the existence of independent contractorship between the parties. x x x [T]he Sales Agency Agreement provided the primary evidence of such relationship. "While the existence of employer-employee relationship is a matter of law, the characterization made by the parties in their contract as to the nature of their juridical relationship cannot be simply ignored, particularly in this case where the parties' written contract unequivocally states their intention" to be strictly bound by independent contractorship.

**APPEARANCES OF COUNSEL**

*Public Attorney's Office* for petitioners.

*Santos Paruñgao Aquino and Santos Law Offices* for respondent.

## DECISION

**DEL CASTILLO, *J.*:**

By this Petition for Review on *Certiorari*,[1] Antonio Valeroso and Allan Legatona (petitioners) assail the November 11, 2011 Decision[2] and May 18, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 116296, which reversed the May 24, 2010 Decision[4] of the National Labor Relations Commission (NLRC) and consequently dismissed their Complaint for illegal dismissal and money claims against Skycable Corporation (respondent).

***Antecedent Facts***

This case arose from a Complaint[5] for illegal dismissal, non-payment of 13th month pay, separation pay and illegal deduction filed by petitioners against respondent on February 25, 2009 before the Labor Arbiter, docketed as NLRC NCR Case No. 02-03439-09. The Complaint was subsequently amended to include regularization and payment of moral and exemplary damages as additional causes of action.[6]

Petitioners Valeroso and Legatona alleged that they started working on November 1, 1998 and July 13, 1998, respectively, as account executives tasked to solicit cable subscriptions for respondent, as evidenced by Certifications[7] issued by Michael

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[1] *Rollo*, pp. 9-24.

[2] CA *rollo*, pp. 332-338; penned by Associate Justice Samuel H. Gaerlan and concurred in by Associate Justices Rosmari D. Carandang and Ramon R. Garcia.

[3] *Id.* at 357.

[4] Records, pp. 296-304; penned by Commissioner Dolores M. Peralta-Beley and concurred in by Presiding Commissioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap.

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

[6] *Id.* at 9-11.

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

T. De la Cuesta (De la Cuesta), respondent's Sales Territory Manager. As shown in their payslips[8] for the years 2001 to 2006, they received commissions ranging from ₱15,000.00 to ₱30,000.00 each upon reaching a specific quota every month and an allowance of ₱6,500.00 to ₱7,000.00 per month. From being direct hires of respondent, they were transferred on January 1, 2007 to Skill Plus Manpower Services sans any agreement for their transfer. In February 2009, they were informed that their commissions would be reduced due to the introduction of prepaid cards sold to cable subscribers resulting in lower monthly cable subscriptions. Dismayed, they notified their manager, Marlon Pasta (Pasta), of their intention to file a labor case with the NLRC, which they did on February 25, 2009. Pasta then informed them that they will be dropped from the roster of its account executives, which act, petitioners claimed, constitutes unfair labor practice.

Further, petitioners claimed that they did not receive 13th month pay for 2006 and were underpaid of such benefit for the years 2007 and 2008; and that in January 2008, petitioner Legatona signed a Release and Quitclaim[9] in consideration of the amount of ₱25,000.00 as loyalty bonus from respondent.

Respondent, on the other hand, claimed that it did not terminate the services of petitioners for there was never an employer-employee relationship to begin with. It averred that in 1998, respondent (then Central CATV, Inc.) engaged petitioners as independent contractors under a Sales Agency Agreement.[10] In 2007, respondents decided to streamline its operations and instead of contracting with numerous independent account executives such as petitioners, respondent engaged the services of an independent contractor, Armada Resources & Marketing Solutions, Inc. (Armada, for brevity; formerly Skill Plus Manpower Services) under a Sales Agency Agreement.[11] As a

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[8] *Id.* at 38-57.

[9] *Id.* at 58.

[10] *Id.* at 75-78.

[11] *Id.* at 79-91.

result, petitioners' contracts were terminated but they, together with other sales account executives, were referred for transfer to Armada. Petitioners then became employees of Armada. In 2009, respondent and Armada again entered into a Sales Agency Agreement,[12] wherein petitioners were again tasked to solicit accounts/generate sales for respondent.

Respondent insisted that in hiring petitioners and Armada as independent contractors, it engaged in legitimate job contracting where no employer-employee relation exists between them. In an affidavit,[13] De la Cuesta stated that the certifications he issued are not employment certifications but are mere accommodations, requested by petitioners themselves, for their credit card and loan applications. Moreover, Armada's President, Francisco Navasa (Navasa), in his affidavit,[14] verified that Armada is an independent contractor which selected and engaged the services of petitioners, paid their compensation, exercised the power to control their conduct and discipline or dismiss them. Therefore, when petitioners filed their Complaint in February 2009, they were employees of Armada and as such, had no cause of action against respondent.

Petitioners, however, assailed the allegation that they were employees of Armada, claiming that they were directly hired, paid and dismissed by respondent. They cited the following as indicators that they are under the direct control and supervision of respondent: 1) respondent's officers supervise their area of work, monitor them daily, update them of new promos and installations they need to work on, inform them of meetings and penalize them for non-attendance, ask them to train new agents/account executives, and inform them of new prices and expiration dates of product promos; 2) respondent's supervisors delegate to them authority to investigate, campaign against and legalize unlawful cable connections; 3) respondent's supervisors monitor their quota production and impose guaranteed charges

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[12] *Id.* at 92-97.

[13] *Id.* at 120-121.

[14] *Id.* at 124-125.

as penalty for failing to meet their quota; and 4) respondent consistently gives trophies to award them of their outstanding performance.

***Ruling of the Labor Arbiter***

In a Decision[15] dated August 26, 2009, the Labor Arbiter dismissed the Complaint since petitioners failed to establish by substantial evidence that respondent was their employer. The Labor Arbiter observed that petitioners failed to identify and specify the person who allegedly hired them, paid their wages and exercised supervision and control over the manner and means of performing their work. There was neither any evidence to prove that Pasta, who allegedly dismissed them, is an officer of respondent with an authority to dismiss them. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the complaint filed in the instant case is dismissed as discussed in the body hereof.
>
> SO ORDERED.[16]

***Ruling of the National Labor Relations Commission***

Petitioners filed an appeal with the NLRC attributing reversible error on the Labor Arbiter in dismissing their Complaint on the ground of no employer-employee relationship.

In a Decision[17] dated May 24, 2010, the NLRC reversed the Labor Arbiter's ruling. It found that petitioners are regular employees of respondent having performed their job as account executives for more than one year, even if not continuous and merely intermittent, and considering the indispensability and continuing need of petitioners' tasks to the business. The NLRC observed that there was no evidence that petitioners have substantial capitalization or investment to consider them as independent contractors. On the other hand, the certifications

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[15] *Id.* at 163-170; penned by Labor Arbiter Gaudencio P. Demaisip, Jr.

[16] *Id.* at 170.

[17] *Id.* at 296-304.

and the payslips presented by petitioners constitute substantial evidence of employer-employee relationship. The NLRC held that upon termination of the Sales Agency Agreement with Armada in 2009, petitioners were considered dismissed without just cause and due process. The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the instant appeal is GRANTED and the assailed Decision of Labor Arbiter Gaudencio P. Demaisip, Jr. dated August 26, 2009, is REVERSED and SET ASIDE, and a new one entered declaring complainants to have been illegally dismissed. Accordingly, respondent Skycable Corporation/Central CATV, Inc. is hereby directed to immediately reinstate complainants to their former position[s] and to pay each of the complainants their full backwages reckoned from February 25, 2009 up to the actual payroll reinstatement, (tentatively computed at ₱607,200.00), in addition to the amount of ₱58,500.00 representing 13$^{th}$ month pay differentials and pro-rata 13$^{th}$ month pay for 2009.

SO ORDERED.[18]

With the NLRC's ruling in favor of petitioners, respondent filed a motion for reconsideration. This motion was, however, denied by the NLRC in its Resolution[19] of July 27, 2010.

***Ruling of the Court of Appeals***

Respondent filed a Petition for *Certiorari*[20] with the CA, attributing grave abuse of discretion on the part of the NLRC in holding it liable for the alleged illegal dismissal of petitioners.

The CA rendered a Decision[21] on November 11, 2011 granting respondent's Petition for *Certiorari* and reversing the NLRC Decision. The CA sustained the Labor Arbiter's finding that there was no evidence to substantiate the bare allegation of

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[18] *Id.* at 305-306.

[19] *Id.* at 334-335.

[20] CA *rollo*, pp. 3-29.

[21] *Id.* at 332-338.

employer-employee relationship between the parties. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant petition is GRANTED and the Decision dated May 24, 2010 of the National Labor Relations Commission in NLRC NCR Case No. 02-03439-09 is hereby REVERSED and SET ASIDE.

SO ORDERED.[22]

Petitioners moved for reconsideration which was denied by the CA in its Resolution[23] dated May 18, 2012.

**Issues**

Hence, this Petition raising the following issues:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN RENDERING ITS DECISION DATED NOVEMBER 11, 2011.

II.

WHETHER THE PETITIONERS WERE RESPONDENT'S REGULAR EMPLOYEES, WHOSE DISMISSAL FROM EMPLOYMENT WAS ILLEGAL.[24]

Petitioners maintain that respondent failed to discharge the burden of disproving the employer-employee relationship through competent evidence of independent contractorship. They assert that the nature of their work and length of service with respondent made them regular employees as defined in Article 280[25] of the

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[22] *Id.* at 337.

[23] *Id.* at 357.

[24] *Rollo*, p. 14.

[25] Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the

Labor Code. Consequently, the CA gravely erred in dismissing their Complaint for illegal dismissal against respondent.

**Our Ruling**

The Petition has no merit.

The pivotal issue to be resolved in this case is whether petitioners were employees of respondent.

Well-entrenched is the doctrine that the existence of an employer-employee relationship is ultimately a question of fact and that the findings thereon by the Labor Arbiter and NLRC shall be accorded not only respect but even finality when supported by substantial evidence.[26] However, considering the conflicting findings of fact by the Labor Arbiter, the NLRC and the CA, the Court is impelled to re-examine the records and resolve this factual issue.

To prove the claim of an employer-employee relationship, the following should be established by competent evidence: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished.[27] Among the four, the most determinative factor in ascertaining the existence of employer-employee relationship is the "right of control test."[28]

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completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: Provided, That any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

[26] *Basay v. Hacienda Consolacion and/or Bouffard III*, 632 Phil. 430, 444 (2010).

[27] *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117, 186984-85, October 17, 2013, 707 SCRA 646, 690.

[28] *Lirio v. Genovia*, 677 Phil. 134, 148 (2011).

Under this control test, the person for whom the services are performed reserves the right to control not only the end to be achieved, but also the means by which such end is reached.[29]

We rule that an employer-employee relationship is absent in this case. The evidence presented by petitioners did not prove their claim that they were employees of respondent. The certifications issued by De la Cuesta are not competent evidence of employer-employee relation as these merely certified that respondent had engaged the services of petitioners without specifying the true nature of such engagement. These documents did not certify that petitioners were employees but were only issued to accommodate petitioners' request for loan applications, which fact was not refuted by petitioners. As for the payslips presented, it appears that only the payslips for the years 2001 to 2006 were submitted. No payslips for the years material to this case (2007 to 2009) were submitted. It is undisputed that petitioners were transferred to Armada in 2007, thus, we cannot give much credence to the payslips issued before this period.

We, further, find no merit in petitioners' assertion that respondent's control over them was demonstrated. "[G]uidelines indicative of labor law 'control' do not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means and methods to be employed in attaining the result."[30] Here, we find that respondent's act of regularly updating petitioners of new promos, new price listings, meetings and trainings of new account executives; imposing quotas and penalties; and giving commendations for meritorious performance do not pertain to the means and methods of how petitioners were to perform and accomplish their task of soliciting cable subscriptions. At most, these indicate that respondent regularly monitors the result of petitioners' work but in no way dictate upon them the manner

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[29] *Encyclopedia Britannica (Phils.), Inc. v. National Labor Relations Commission*, 332 Phil. 1, 6 (1996).

[30] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*, 655 Phil. 384, 402 (2011).

in which they should perform their duties. Absent any intrusion by respondent into the means and manner of conducting petitioners' tasks, bare assertion that petitioners' work was supervised and monitored does not suffice to establish employer-employee relationship.

Reliance by petitioners on the case of *Francisco v. National Labor Relations Commission*[31] is misplaced. In that case, the Court adopted a two-tiered test in order to determine the true relationship between the employer and employee. This two-tiered test, which involves: "(1) the putative employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; and (2) the underlying economic realities of the activity or relationship," has been made especially appropriate in cases where there is no written agreement to base the relationship on and where the various tasks performed by the worker brings complexity to the relationship with the employer.[32] Thus, in addition to the control test, the totality of the economic circumstances of the worker is taken into light to determine the existence of employment relationship.

In the present case, there is a written contract, *i.e.*, the Sales Agency Agreement, which served as the primary evidence of the nature of the parties' relationship. In this duly executed and signed agreement, petitioners and respondent unequivocally agreed that petitioners' services were to be engaged on an agency basis as sales account executives and that no employer-employee relationship is created but an independent contractorship. It is therefore clear that the intention at the time of the signing of the agreement is not to be bound by an employer-employee relationship. At any rate, even if we are to apply the two-tiered test pronounced in the *Francisco* case, there can still be no employer-employee relationship since, as discussed, the element of control is already absent.

Indeed, "[t]he presence of [the] power of control is indicative of an employment relationship while the absence thereof is

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[31] 532 Phil. 399 (2006).

[32] *Id.* at 407-408.

indicative of independent contractorship."[33] Moreover, evidence on record reveal the existence of independent contractorship between the parties. As mentioned, the Sales Agency Agreement provided the primary evidence of such relationship. "While the existence of employer-employee relationship is a matter of law, the characterization made by the parties in their contract as to the nature of their juridical relationship cannot be simply ignored, particularly in this case where the parties' written contract unequivocally states their intention"[34] to be strictly bound by independent contractorship. Petitioner Legatona, in fact, in his Release and Quitclaim, acknowledged that he was performing sales activities as sales agent/independent contractor and not an employee of respondent. In the same token, De la Cuesta and Navasa, made sworn testimonies that petitioners are employees of Armada which is an independent contractor engaged to provide marketing services for respondent.

Neither can we subscribe to petitioners' contention that they are considered regular employees of respondent for they perform functions necessary and desirable to the business operation of respondent in consonance with Article 280 of the Labor Code. We have held that "Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, *i.e.*, regular employees and casual employees, for purposes of determining [their rights] to certain benefits, [such as] to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute,"[35] as in this case.

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[33] *AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission*, 334 Phil. 712, 722 (1997).

[34] *Royale Homes Marketing Corporation v. Alcantara*, G.R. No. 195190, July 28, 2014, 731 SCRA 147, 159-160.

[35] *Atok Big Wedge Co., Inc. v. Gison*, 670 Phil. 615, 629 (2011); *Coca Cola Bottlers Phils., Inc. v. National Labor Relations Commission*, 366 Phil. 581, 590 (1999) citing *Singer Sewing Machine Company v. Drilon*, G.R. No. 91307, January 24, 1991, 193 SCRA 270, 279.

Evidently, the legal relation of petitioners as sales account executives to respondent can be that of an independent contractor. There was no showing that respondent had control with respect to the details of how petitioners must conduct their sales activity of soliciting cable subscriptions from the public. In the case of *Abante, Jr. v. Lamadrid Bearing & Parts Corporation*,[36] Empermaco Abante, Jr., a commission salesman who pursued his selling activities without interference or supervision from respondent company and relied on his own resources to perform his functions, was held to be an independent contractor. Similarly, in *Sandigan Savings & Loan Bank, Inc. v. National Labor Relations Commission*,[37] Anita Javier was also held to be an independent contractor as the Court found that Sandigan Realty Development Corporation had no control over her conduct as a realty sales agent since its only concern or interest was in the result of her work and not in how it was achieved.

All told, we sustain the CA's factual findings and conclusion and accordingly, find no cogent reason to overturn the dismissal of petitioners' Complaint against respondent.

**WHEREFORE,** the Petition is **DENIED**. The November 11, 2011 Decision and May 18, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116296 are **AFFIRMED**.

**SO ORDERED.**

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

*Mendoza, J.,* on official leave.

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[36] 474 Phil. 414, 426 (2004).

[37] 324 Phil. 348, 360 (1996).

**SECOND DIVISION**

[G.R. No. 204693. July 13, 2016]

**GUAGUA NATIONAL COLLEGES,** *petitioner, vs.* **GUAGUA NATIONAL COLLEGES FACULTY LABOR UNION and GUAGUA NATIONAL COLLEGES NON-TEACHING AND MAINTENANCE LABOR UNION,** *respondents.*

**SYLLABUS**

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; COLLECTIVE BARGAINING AND ADMINISTRATION OF AGREEMENTS; COLLECTIVE BARGAINING AGREEMENT (CBA); "NO STRIKE, NO LOCK-OUT" PROVISIONS; MAY ONLY BE INVOKED BY AN EMPLOYER WHEN THE STRIKE IS ECONOMIC IN NATURE OR ONE WHICH IS CONDUCTED TO FORCE WAGE OR OTHER AGREEMENTS FROM THE EMPLOYER THAT ARE NOT MANDATED TO BE GRANTED BY LAW.—** [T]he parties through their CBA, agreed to a "no-strike, no lock-out" policy and to resolve their disputes through grievance machinery and voluntary arbitration. Despite these, respondents were justified in filing a notice of strike in light of the facts of this case. It is settled that a "no strike, no lock-out" provision in the CBA "may [only] be invoked by [an] employer when the strike is economic in nature or one which is conducted to force wage or other agreements from the employer that are not mandated to be granted by law. It [is not applicable when the strike] is grounded on unfair labor practice." Here, while respondents enumerated four grounds in their notice of strike, the facts of the case reveal that what primarily impelled them to file said notice was their perception of bad faith bargaining and violation of the duty to bargain collectively by GNC – charges which constitute unfair labor practice under Article 248(g) of the Labor Code. x x x [R]espondents cannot be faulted into believing that GNC was bargaining in bad faith and had no genuine intention to comply with its duty to bargain collectively since it denied arriving at an agreement with respondents not once but twice. This belief

in good faith prompted them to file a notice of strike. Clearly, respondents' intention was to protest what they perceived to be acts of unfair labor practice on the part of GNC through the exercise of their right to strike enshrined in the Constitution and not to circumvent the "no strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of the CBA.

2. **ID.; ID.; ID.; ID.; AN EXPRESS STIPULATION IN THE CBA THAT UNFAIR LABOR PRACTICES SHOULD BE RESOLVED BY THE VOLUNTARY ARBITRATOR OR PANEL OF VOLUNTARY ARBITRATORS IS REQUIRED SINCE THE SAME FALL WITHIN A SPECIAL CLASS OF DISPUTES THAT ARE GENERALLY WITHIN THE EXCLUSIVE ORIGINAL JURISDICTION OF THE LABOR ARBITER BY EXPRESS PROVISION OF LAW.—** Plainly, a charge of unfair labor practice does not fall under the first three definition of grievance x x x [in the parties' CBA]. Neither can it be considered as embraced by the fourth which at first blush, appears to be a "catch-all" definition of grievance because of the phrase "[a]ny other matter or dispute." It has been held that while the phrase "all other labor dispute" or its variant "any other matter or dispute" may include unfair labor practices, it is imperative, however, that the agreement between the union and the company states in unequivocal language that the parties conform to the submission of unfair labor practices to voluntary arbitration. It is not sufficient to merely say that parties to the CBA agree on principle that "all disputes" or as in this case, "any other matter or dispute," should be submitted to the grievance machinery and eventually to the voluntary arbitrator. There is a need for an express stipulation in the CBA that unfair labor practices should be resolved in the ultimate by the voluntary arbitrator or panel of voluntary arbitrators since the same fall within a special class of disputes that are generally within the exclusive original jurisdiction of the Labor Arbiter by express provision of the law. "Absent such express stipulation, the phrase '*all disputes*' [or "any other matter or dispute" for that matter] should be construed as limited to the areas of conflict traditionally within the jurisdiction of Voluntary Arbitrators, *i.e.,* disputes relating to contract-interpretation, contract-implementation, or interpretation or enforcement of company personnel policies. [Unfair labor practices cases] – not falling within any of these categories –

should then be considered as a special area of interest governed by a specific provision of law." In the absence here of an express stipulation in the CBA that GNC and respondents agreed to submit cases of unfair labor practice to their grievance machinery and eventually to voluntary arbitration, jurisdiction over the parties' dispute does not vest upon the voluntary arbitrator.

3. **ID.; ID.; STRIKES AND LOCKOUTS; THE SECRETARY OF LABOR AND EMPLOYMENT'S CERTIFICATION FOR COMPULSORY ARBITRATION OF A DISPUTE OVER WHICH HE HAS ASSUMED JURISDICTION IS AN EXERCISE OF THE POLICE POWER OF THE STATE AND IN THE EXERCISE OF WHICH HE IS GRANTED GREAT BREADTH OF DISCRETION TO FIND A SOLUTION TO A LABOR DISPUTE.—** [T]he Secretary of Labor and Employment's certification for compulsory arbitration of a dispute over which he/she has assumed jurisdiction is but an exercise of the powers granted to him/her by Article 263(g) of the Labor Code as amended. "[These] powers x x x have been characterized as an exercise of the police power of the State, aimed at promoting the public good. When the Secretary exercises these powers, he[/she] is granted 'great breadth of discretion' to find a solution to a labor dispute." The Court therefore cannot subscribe to GNC's contention since to say that compulsory arbitration may only be resorted to in instances agreed upon by the parties would limit the power of the Secretary of Labor and Employment to certify cases that are proper subject of compulsory arbitration. The great breadth of discretion granted to the Secretary of Labor and Employment for him/her to find an immediate solution to a labor dispute would unnecessarily be diminished if such would be the case.

4. **ID.; ID.; COLLECTIVE BARGAINING AND ADMINISTRATION OF AGREEMENTS; DUTY TO BARGAIN COLLECTIVELY; THE TEST OF GOOD FAITH BARGAINING IS NOT THE EFFECT OF AN EMPLOYER'S OR A UNION'S ACTIONS INDIVIDUALLY BUT THE IMPACT OF ALL SUCH OCCASIONS OR ACTIONS, CONSIDERED AS A WHOLE.—** The duty to bargain collectively is defined under Article 252 of the Labor Code x x x. "It has been held that the crucial question whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case. There

is no *per se* test of good faith in bargaining. Good faith or bad faith is an inference to be drawn from the facts." "The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole x x x." Here, the collective conduct of GNC is indicative of its failure to meet its duty to bargain in good faith. Badges of bad faith attended its actuations both at the plant and NCMB levels.

5. **ID.; ID.; ID.; THE CBA PROPOSED BY THE UNION MAY BE UNILATERALLY IMPOSED UPON THE EMPLOYER WHEN IT IS FOUND THAT THE EMPLOYER HAS VIOLATED ITS DUTY TO BARGAIN COLLECTIVELY.** — In the cases of *Kiok Loy, Divine Word University of Tacloban v. Secretary of Labor and Employment,* and *General Milling Corporation,* the Court unilaterally imposed upon the employers the CBAs proposed by the unions after the employers were found to have violated their duty to bargain collectively. This is on the premise that the said employers, by their acts which bespeak of insincerity, had lost their statutory right to negotiate or renegotiate the terms and conditions contained in the unions' proposed CBAs. Here, the Court finds nothing wrong in the pronouncement of the NLRC that the final CBA draft submitted by respondents to the NCMB should serve as the parties' CBA for the period June 1, 2009 to May 31, 2014. More than the fact that GNC is the erring party in this case, records show that the said draft is actually the final CBA draft of the parties which incorporates their agreements. Indeed and as held by the NLRC, fairness, equity and social justice are best served if the said final CBA draft shall govern their industrial relationship.

**APPEARANCES OF COUNSEL**

*Padilla Law Office* for petitioner.
*Emmanuel Noel A. Cruz* for respondents.

## DECISION

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certiorari* assails the September 26, 2012 Decision[1] and December 3, 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 120669, which respectively denied for lack of merit the Petition for *Certiorari* filed therewith by petitioner Guagua National Colleges (GNC) and the motion for reconsideration thereto.

***Factual Antecedents***

GNC is an educational institution located in Sta. Filomena, Guagua, Pampanga. On the other hand, respondents Guagua National Colleges Faculty Labor Union (GNCFLU) and Guagua National Colleges Non-Teaching and Maintenance Labor Union (GNCNTMLU) were the bargaining agents for GNC's faculty members and non-teaching and maintenance personnel, respectively.

Beginning 1994 until their present dispute, the parties concluded their Collective Bargaining Agreements (CBA) without issue as follows: (1) CBA effective June 1, 1994 to May 31, 1999 (1994-1999 CBA),[3] the economic provisions of which were renegotiated on November 3, 1997 for years 1997-1999;[4] (2) CBA effective June 1, 1999 to May 31, 2004,[5] the economic provisions of which were renegotiated on July 4, 2002 for years 2002-2004;[6] and, (3) CBA effective June 1, 2004 to May 31, 2009.[7] The

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[1] CA *rollo*, pp. 683-709; penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Francisco P. Acosta and Angelita A. Gacutan.

[2] *Id.* at 741.

[3] Records, pp. 76-88.

[4] *Id.* at 91.

[5] *Id.* at 92-95.

[6] *Id.* at 96-97.

[7] *Id.* at 98-102.

aforementioned CBAs applied to both GNCFLU and GNCNTMLU without distinction.

Significantly, the 1994-1999 CBA has a "no-strike, no lock-out" clause under Section 17 thereof which likewise provides for mechanism for grievance resolution and voluntary arbitration. This provision was considered carried over in the subsequent CBAs.[8]

On April 3, 2009, the Presidents of both GNCFLU and GNCNTMLU, wrote the President of GNC, Atty. Ricardo V. Puno (Atty. Puno), to inform him of the former's intention to open the negotiation for the renewal of the then existing CBA which would expire on May 31, 2009.[9] Attached to the said letter was respondents' proposal for the next CBA[10] which was received by GNC on even date.[11]

Instead of serving upon respondents a reply/counter-proposal within 10 days from its receipt of respondents' proposal, GNC wrote respondents on May 11, 2009 calling for a meeting at 10:00 a.m. of May 15, 2009 regarding CBA negotiations. While the said meeting took place and was attended by panel members from GNC, GNCFLU and GNCNTMLU, no agreement was reached except that GNC would notify respondents of the next negotiation meeting. However, what respondents later received from GNC's Corporate Secretary, Atty. Ricardo M. Sampang (Atty. Sampang) was not a notice of meeting but a letter dated May 27, 2009 which, among others, stated that the "management

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[8] This is in view of the following clauses in the parties' subsequent CBAs, to wit: (1) In the CBA for 1999-2004, "[Terms of the p]revious CBA — June 1, 1994-May 31, 1999 which were not touched or covered by the current CBA — 1999-2004 is still honored and become part and parcel of the latter," *id.* at 94; and, (2) In the CBA for 2004-2009, "Matters contained in the previous CBA, which were not touched or covered by the current CBA are still honored and become part and parcel of the latter," *id.* at 102.

[9] *Id.* at 103.

[10] *Id.* at 104-106.

[11] *Id.* at 103.

is not inclined to grant the economic/monetary-related proposals in [respondents'] letter of April 3, 2009."[12]

Still, respondents on June 1, 2009, requested for a conference with GNC to discuss the ground rules.[13] GNC granted respondents' request and scheduled a meeting at 1:00 p.m. of June 11, 2009 at the GNC boardroom.[14] Although respondents described GNC as "non-committal" during the meeting, they nevertheless reckoned thereon the start of the negotiation proper between the parties.

As to the events that transpired thereafter, the parties have conflicting claims.

While GNC asserted in general terms that the parties exchanged proposals and counter-proposals in the months that followed,[15] respondents, on the other hand, detailed the negotiations that allegedly ensued between the parties,[16] to wit: (1) another meeting was held on June 16, 2009 but since GNC at that time still did not have any reply/counter-proposal to respondents' proposal, it asked for three weeks to submit the same; (2) in their July 10, 2009 meeting, GNC failed to submit its purported counter-proposal; (3) in the meeting of July 31, 2009, Cita Rodriguez (Rodriguez), the school treasurer and a member of the management panel, discussed with respondents some of the economic items in respondents' proposal, particularly those relating to longevity pay, birthday gift, family assistance, medical check-up and clothing allowance; (4) the parties discussed further on longevity pay and family assistance benefit in the August 11, 2009 meeting. They also talked about an increase in rice subsidy; (5) in the August 17, 2009 meeting, Rodriguez stated that based on GNC's Faculty Manual of 2008, longevity pay shall be given according to the number of years of service and shall be deemed as loyalty

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[12] *Id.* at 107.

[13] *Id.* at 108.

[14] *Id.* at 109.

[15] Position Paper for Guagua National Colleges, *id.* at 140-160.

[16] [Respondents'] Position Paper, *id.* at 49-74.

pay. The parties then agreed to an increase of ₱5.00 in the longevity pay previously being given; (6) in the following meeting of August 24, 2009, Rodriguez announced the increased benefits included in the new CBA, to wit: loyalty pay, cash gift, rice subsidy, birthday gift and clothing allowance. Rodriguez likewise confirmed the grant of a Union Office at the 3rd floor of Goseco Building in GNC. However, respondents' demand for an increased signing bonus of ₱100,000.00 for each union (previously given at ₱50,000.00 each union) remained unsettled. Nevertheless, the parties agreed to further discuss the matter; (7) on September 23, 2009, respondents submitted to GNC a draft of the CBA containing all the benefits agreed upon. GNC requested that some revisions be made thereon; (8) Atty. Sampang called for a meeting on October 9, 2009. In the said meeting, the parties reviewed all the benefits agreed on. Rodriguez then stated that the signing of the next CBA may take place the following meeting; (9) on October 15, 2009, respondents submitted to Atty. Sampang the agreed terms of the CBA which already contained the revisions requested by GNC and the ₱100,000.00 signing bonus for each union. The document according to them was by then ready for signing; (10) respondents made several follow-ups with both Atty. Sampang and Rodriguez regarding the signing of the CBA but to no avail; (11) respondents received from Atty. Sampang, through a letter[17] dated December 21, 2009, GNC's counter-proposal.[18] Respondents were surprised since they thought all along that all matters, except for some details on the signing bonus, were already settled. Besides, the three-week period previously requested by GNC within which to submit its counter-proposal had long lapsed; (12) Atty. Sampang requested respondents to attend a meeting with Atty. Puno on January 5, 2010. Despite Atty. Puno's presence in the school premises, he did not, however, face respondents' representatives who waited for him for a considerable length of time; (13) in view of the foregoing, respondents were constrained to write Atty. Puno

[17] *Id.* at 112.

[18] *Id.* at 113-119.

on January 8, 2010.[19] They stressed that while they have been bargaining in good faith, it was otherwise on the part of GNC. Respondents thus expressed their belief that the parties have already reached an impasse. They therefore asked GNC to respond to their letter and therein state its stand as to whether a third party is needed to assist them in threshing out their differences. As respondents did not get any reply from GNC, they filed on February 3, 2010 a preventive mediation case with the National Conciliation and Mediation Board (NCMB).[20]

***Proceedings before the National Conciliation and Mediation Board***

Again, the parties differ in their account of what transpired before the NCMB.

Respondents alleged that after several mediation meetings, the parties finally agreed on the details regarding the grant of signing bonus. Hence, they undertook to compose the final draft of the 2009-2014 CBA which it submitted to the NCMB on May 14, 2010 and copy furnished GNC on May 21, 2010.[21] Respondents likewise averred that the parties already agreed to schedule the signing of the said CBA on May 28, 2010. To their dismay, however, no signing of the CBA took place. Instead, Atty. Sabino Jose M. Padilla III (Atty. Padilla) appeared before the NCMB on behalf of GNC and requested for 10 days or until June 7, 2010 within which to submit GNC's Comment/ Counter-Proposal to the "Union[s'] CBA draft." Although disappointed that Atty. Padilla merely referred to the supposed "final draft" of the parties as the "Union[s'] CBA draft," respondents agreed to the period requested by GNC to give the latter time to go over it. Respondents, however, manifested that they would want the parties to meet again on June 1, 2010. Come the said date, no one appeared on behalf of GNC. Thus, respondents filed on the same day a Notice of Strike[22] charging

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[19] *Id.* at 121-123.

[20] *Id.* at 124-125.

[21] [Respondents'] Position Paper, *id.* at 49-74 at 64.

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

GNC with bad faith bargaining, violation of its duty to bargain, gross violations of the provisions of the CBA, and gross and blatant diminution of benefits. Subsequent to this, GNC allegedly stopped the grant of certain benefits to its employees.

GNC, on the other hand, contended that during mediation meetings with the NCMB, respondents submitted several CBA drafts for its consideration. Upon its receipt on May 21, 2010 of another draft CBA[23] from respondents under cover letter dated May 20, 2010,[24] it decided to secure the services of Atty. Padilla to assist it in its negotiations with respondents. Hence, on May 28, 2010, Atty. Padilla appeared before the NCMB and asked for 10 days to submit GNC's comment/counter-proposal to the purported draft CBA of respondents. However, on June 1, 2010, respondents filed a notice of strike.

In view of the notice of strike, the NCMB called for a conciliation conference on June 4, 2010 which was later set for continuation on June 9, 2010. Meanwhile on June 7, 2010, GNC filed with the NCMB its counter-proposal[25] to respondents' purported final CBA draft.

Subsequently during the June 9, 2010 conference, GNC filed a Motion to Strike Out Notice of Strike and to Refer Dispute to Grievance Machinery and Voluntary Arbitration Pursuant to the Collective Bargaining Agreement.[26] It invoked the "no-strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of the parties' existing CBA which was carried over from their 1994-1999 CBA and the CBAs subsequent thereto. According to it, the four grounds cited by respondents in their notice of strike, *i.e.*, bad faith bargaining, violation of the duty to bargain, gross violation of the provisions of the CBA, and gross and blatant diminution

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[23] *Id.* at 208-224.

[24] *Id.* at 207.

[25] *Id.* at 227-223.

[26] *Id.* at 11-16.

of benefits, all come within the definition of "grievance" under their CBA, hence, not strikeable.

In the afternoon of the same day, respondents conducted their respective Strike Votes wherein majority voted in favor of a strike.[27] They then informed the NCMB of the strike vote results on June 21, 2010.[28]

Since the NCMB had not yet acted upon GNC's Motion to Strike Out Notice of Strike and to Refer Dispute to Grievance Machinery and Voluntary Arbitration Pursuant to the Collective Bargaining Agreement despite the looming strike of respondents, GNC urged the Secretary of Labor and Employment to assume jurisdiction over the dispute.[29] It specifically prayed in its letter of June 24, 2010 that the Secretary of Labor and Employment, pursuant to Article 263(g)[30] of the Labor Code "assume jurisdiction over the labor dispute between GNC and the Unions,

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[27] *Id.* at 8-10.

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

[29] *Id.* at 167-168.

[30] Article. 263. *Strikes, picketing and lockouts*.

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

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent,

*i.e.*, GNCFLU and GNCNTMLU[,] in order to enjoin the intended strike x x x and thereafter direct the parties to submit the dispute to the grievance machinery and voluntary arbitration provisions of the CBA."[31]

In an Order[32] dated June 28, 2010, the Secretary of Labor and Employment, after finding the subject labor dispute as one affecting national interest, assumed jurisdiction over the case; certified the same to the National Labor Relations Commission (NLRC) for immediate compulsory arbitration; and, accordingly enjoined the intended strike.

***Proceedings before the National Labor Relations Commission***

In their Position Paper,[33] respondents recounted that GNC at the plant level had already failed to reply or furnish them a

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their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty-four (24) hours from knowledge of the occurrence of such a strike or lockout, jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the industries that, in his opinion, are indispensable to the national interest, and from intervening at any time and assuming jurisdiction over any such labor dispute in order to settle or terminate the same.

[31] Records, p. 168.

[32] *Id.* at 35-38.

[33] *Id.* at 49-74.

timely counter-proposal. While GNC asked for three weeks to submit its counter-proposal in the meeting of June 16, 2009, no such counter-proposal was submitted. Instead, GNC opted to orally discuss with respondents the terms of the CBA. Yet, after the conduct of a series of meetings/negotiations and at a time when the parties had already substantially agreed on the terms of the new CBA, respondents received from Atty. Sampang on December 21, 2009 GNC's counter-proposal to respondents' purported "latest proposal." Respondents denied the existence of any "latest proposal" which requires a "counter-proposal" from GNC. And even assuming that said counter-proposal is GNC's answer to the proposal they furnished it at very outset, the same was already belatedly submitted not only because the period to serve a reply/counter-proposal had long lapsed, but also since all matters were already substantially agreed upon by the parties. This explains why at that point, respondents were already following up the signing of the CBA.

The same goes true in the NCMB level. Respondents averred that the parties had already come into agreement regarding the signing bonus after several mediation/conciliation meetings held therein. But when they undertook to draft the CBA containing the terms agreed upon by the parties and submitted the same to the NCMB, Atty. Padilla suddenly entered the picture and submitted a counter-proposal to what he referred to as the "Union[s'] CBA draft" when in fact, the same was actually the parties' final draft. Respondents thus argued that GNC clearly committed an unfair labor practice by bad faith bargaining. In addition, respondents averred that GNC, without notice, stopped the release of benefits to its employees.

For its part, GNC called attention to the fact that when it requested the Secretary of Labor and Employment to assume jurisdiction over the dispute, it also prayed that the same be ordered submitted to the grievance machinery and voluntary arbitration provided for under the parties' CBA. It stressed that its participation in the compulsory arbitration proceeding should therefore not be construed as a waiver of its position that jurisdiction over the dispute rests with the voluntary arbitrator in view of the parties' agreement in the CBA, the pertinent

provisions of the Labor Code, and of the Court's ruling in *University of San Agustin Employees' Union-FFW v. Court of Appeals*.[34]

As to the charge of unfair labor practice on account of its alleged bad faith bargaining and violation of duty to bargain, GNC argued that the same is belied by the fact that since the very beginning, the parties were negotiating. This continued during the mediation and conciliation proceedings before the NCMB. And had not for respondents' impatience which caused them to file a notice of strike, such negotiations would have progressed. To GNC, respondents' move of filing a notice of strike was uncalled for and was only intended to compel GNC to hastily concede to their proposals. What respondents refused to see, however, was GNC's critical financial status that hindered it from readily agreeing with their economic proposals.

GNC likewise denied the allegation that it stopped the release of benefits to its employees. It explained that its Protégé Program[35] was only subjected to stricter implementation guidelines but not stopped; that its employees received their uniforms; and that it could not have stopped the grant of pilgrimage or excursion benefits since no such benefit was provided for in their previous CBAs. What was actually provided therein was the conduct of an annual retreat which was already held in December 2009 at the GNC campus; that as to rice subsidy, the same is granted on a best effort basis and only when savings are generated; and that it had always endeavored to provide, to the best of its ability, the rice subsidy benefits to its employees. In fact, rice subsidy was last given in December 2009; and, that since the management was not generating savings from its operations, no rice subsidy has been released thereafter. GNC asserted that it had been explaining these to the respondents but the latter would just not listen.

The NLRC rendered a Decision[36] on March 31, 2011.

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[34] 520 Phil. 400 (2006).

[35] Otherwise known as Child or Dependent Scholarship Privilege.

[36] *Id.* at 319-343; penned by Commissioner Nieves E. Vivar-De Castro and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra.

As to GNC's contention that jurisdiction over the dispute rests on the voluntary arbitrator, the NLRC had this to say:

> GNC prays that [w]e dismiss the labor dispute for lack of jurisdiction and direct the parties to resolve their differences through the grievance machinery provided for by their CBA and eventually, resolve it under voluntary arbitration. They aver that x x x the failure or refusal of the NCMB and thereafter, the Secretary of Labor and Employment to enforce the grievance machinery and voluntary arbitration x x x [allowed] the unions to circumvent the CBA and their agreement to resolve conflicts through voluntary arbitration by the simple [expedient] of filing a notice of strike. We completely disagree.
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> When GNC filed their petition for assumption of jurisdiction[,] they prayed that:
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>> "x x x. . . the Honorable Secretary of Labor and Employment, pursuant to Article 263 (g) of the Labor Code, assume jurisdiction over the labor dispute between GNC and the Unions, *i.e.*, GNCFLU and GNCNTMLU[,] in order to enjoin the intended strike, or to order the immediate return to work of strikers if a strike has taken place, and thereafter *direct the parties to submit to the grievance machinery and voluntary arbitration provisions of the CBA.*"
>
> The June 28, 2010 Order of the Secretary granted the assumption of jurisdiction of the labor dispute and certified the same to this Commission for compulsory arbitration. In effect, the Order denied GNC's plea to submit the dispute to the parties' grievance machinery and voluntary arbitration. Article 263(g) does not encompass referral of the labor dispute in an industry imbibed with national interest to grievance machinery or voluntary arbitration. In the absence of a timely reconsideration or proof that GNC had exercised any available remedy in law, the Order now stands beyond reproach. In Union of Filipro Employees *v.* NLRC x x x, the Supreme Court ruled:
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>> "When sitting in a compulsory arbitration certified to by the Secretary of Labor, *the NLRC is not sitting as a judicial court but as an administrative body charged with the duty to implement the order of the Secretary*. Its function only is to formulate the terms and conditions of the CBA and cannot go beyond the scope of the order. Moreover, *the Commission is further tasked to act within the earliest time possible and with*

> *the end in view that its action would not only serve the interests of the parties alone, but would also have favorable implications to the community and to the economy as a whole*. This is the clear intention of the legislative body in enacting Art. 263, paragraph (g) of the Labor Code, as amended by Section 27 of RA 6175." x x x

Corollary thereto, as an implementing body, [o]ur authority does not include the power to amend the Secretary's Order. To accede to a referral of the labor dispute to the grievance machinery and ultimately to voluntary arbitration is equivalent to amending said Order. x x x[37]

The NLRC thus upheld its jurisdiction over the case, *viz.*:

The Secretary is explicitly granted by Article 263(g) of the Labor Code the authority to assume jurisdiction over a labor dispute causing or likely to cause a strike or lockout in an industry indispensable to the national interest, and decide the same accordingly. Inevitably, this authority to assume jurisdiction over a labor dispute must include and extend to all questions and controversies arising therefrom, including cases over which the Labor Arbiter has exclusive jurisdiction x x x. It is the declared policy of this Commission that in certified labor disputes for compulsory arbitration, We must ensure and maintain industrial peace based on social justice and national interest by having a full, complete and immediate settlement or adjudication of all labor disputes between the parties, as well as issues that are relevant to or incidents of the certified issues. Under Section 3, par. (b), Rule VIII of our 2005 Revised Rules of Procedure:

> "(b) All cases between the same parties, except where the certification order specifies otherwise, *the issues submitted for arbitration which are already filed or may be filed, and are relevant to or are proper incidents of the certified case, shall be considered subsumed or absorbed by the certified case, and shall be decided by the appropriate Division of the Commission.*
>
> Subject to the second paragraph of Section 4 of Rule IV, *the parties to a certified case, under pain of contempt, shall inform their counsels and the Division concerned of all cases*

[37] *Id.* at 332-334; italics and underscoring in the original; citations omitted.

> *pending with the Regional Arbitration Branches and the Voluntary Arbitrators relative or incident to the certified case before it.*"
>
> Plaintly, [o]ur jurisdiction in this certified case extends to all other issues between the parties so long as they are relevant and germane in the resolution of the main labor dispute. Our rules, under pain of contempt, require consolidation of all cases pending with [o]ur Regional Arbitration Branches or with any Voluntary Arbitrator and consider them included or absorbed in the certified case to be able to completely and finally settle it. The intention of the law is an immediate and complete resolution of a labor dispute in an industry indispensable to the national interest. In this certified case, We are called to exercise [o]ur judgment and adjudicate the labor dispute in accordance with the Order of the Secretary of Labor and Employment. This Commission will not recuse from this responsibility for want of jurisdiction.[38]

Anent the merits of the case, the NLRC held that based on the totality of conduct of GNC, it was guilty of bad faith bargaining and therefore committed an unfair labor practice. This was on account of GNC's submission of a counter-proposal despite the parties already having reached an agreement regarding the terms of the CBA. To the NLRC, the belated submission of GNC's counter-proposal was intended to evade the execution of the CBA. With respect to GNC's alleged withdrawal of employees' benefits, the NLRC ruled that pursuant to Article 253 of the Labor Code, the parties have the duty to keep the *status quo* and to continue in full force and effect the terms and conditions of their existing agreement within 60 days prior to the expiration thereof and/or until a new agreement is reached by the parties. The NLRC, thus, held that GNC failed to abide by this duty when it discontinued the release of benefits pending the conclusion of a new CBA. Finally, pursuant to *General Milling Corporation v. Court of Appeals*,[39] the NLRC deemed it proper to declare the final draft submitted by respondents to the NCMB as the parties' CBA for the period June 1, 2009 to May 31, 2014.

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[38] *Id.* at 330-332; italics and underscoring in the original.

[39] 467 Phil. 125 (2004).

The NLRC ultimately ruled as follows:

WHEREFORE, considering [o]ur foregoing disquisitions, [w]e find Guagua National Colleges (GNC) to have committed an unfair labor practice by violating the statutory duty to bargain collectively in good faith. We [o]rder that the final CBA draft submitted by the unions to GNC and NCMB x x x be the Collective Bargaining Agreement between the parties for the period June 1, 2009 to May 31, 2014 with the parties free to renegotiate the economic provisions not later than May 31, 2012 in accordance with Article 253-A of the Labor Code. Lastly, We further [o]rder that the benefits agreed on by the parties as of August 24, 2009 be given retroactive effect to June 1, 2009.

SO ORDERED.[40]

Since GNC's Motion for Reconsideration[41] thereto was denied for lack of merit in the NLRC Resolution[42] dated May 25, 2011, it sought recourse from the CA through a Petition for *Certiorari*.[43]

***Ruling of the Court of Appeals***

In a Decision[44] dated September 26, 2012, the CA did not find any grave abuse of discretion on the part of NLRC in issuing its assailed orders. Hence, it denied the Petition for lack of merit. GNC filed a Motion for Reconsideration[45] thereto which, however, was likewise denied in the Resolution[46] dated December 3, 2012.

Hence, this Petition for Review on *Certiorari*.

**Issue**

WHETHER THE COURT OF APPEALS X X X COMMITTED GRIEVOUS AND IRREVERSIBLE ERROR WHEN, IN ITS

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[40] Records, pp. 342-343.

[41] *Id.* at 345-360.

[42] *Id.* at 374-376.

[43] CA *rollo*, pp. 3-50.

[44] *Id.* at 683-709.

[45] *Id.* at 711-727.

[46] *Id.* at 741.

DECISION DATED 26 SEPTEMBER 2012 AND RESOLUTION DATED 3 DECEMBER 2012, IT DISMISSED [GNC's] PETITION FOR *CERTIORARI* AND MOTION FOR RECONSIDERATION[,] RESPECTIVELY[,] FOR LACK OF MERIT, THEREBY AFFIRMING THE DECISION DATED 31 MARCH 2011 AND RESOLUTION DATED 25 MAY 2011 OF THE NATIONAL LABOR RELATIONS COMMISSION X X X[47]

Essential to the determination of the issue raised is the resolution of the following:

1. Whether the subject labor dispute should have been ordered submitted to voluntary arbitration by the Secretary of Labor and Employment pursuant to the parties' CBA and not certified to the NLRC for compulsory arbitration;

2. Whether GNC is guilty of bad faith bargaining and thus violated its duty to bargain;

3. Whether the final CBA draft submitted by respondents to the NCMB was correctly declared to be the parties' CBA for the period June 1, 2009 to May 31, 2014.

**Our Ruling**

The Petition has no merit.

*The Secretary of Labor and Employment correctly certified the subject labor dispute to the NLRC for compulsory arbitration.*

GNC asserts that it is the voluntary arbitrator which has jurisdiction over the grounds cited by respondents in their notice of strike in view of Section 17 of the parties' 1994-1999 CBA. The said provision contains the agreement of the parties on a "no strike, no lock-out" policy and on grievance resolution and voluntary arbitration which was carried over to their subsequent CBAs up to the existing one. According to GNC, respondents

[47] *Rollo*, p. 22.

should not have filed a notice of strike in view of such "no-strike, no lock-out" clause and also since respondents' grounds for strike are within the scope of "grievance" to be resolved in accordance with the said Section 17. It argues that respondents, by the simple expedient of filing a notice of strike, were able to circumvent the "no strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of their CBA.

Indeed, the parties through their CBA, agreed to a "no-strike, no lock-out" policy and to resolve their disputes through grievance machinery and voluntary arbitration. Despite these, respondents were justified in filing a notice of strike in light of the facts of this case. It is settled that a "no strike, no lock-out" provision in the CBA "may [only] be invoked by [an] employer when the strike is economic in nature or one which is conducted to force wage or other agreements from the employer that are not mandated to be granted by law. It [is not applicable when the strike] is grounded on unfair labor practice."[48] Here, while respondents enumerated four grounds in their notice of strike, the facts of the case reveal that what primarily impelled them to file said notice was their perception of bad faith bargaining and violation of the duty to bargain collectively by GNC — charges which constitute unfair labor practice under Article 248(g) of the Labor Code.[49]

To recall, respondents acted prudently when they filed a preventive mediation case the first time that GNC refused to acknowledge at the plant level that the parties already agreed on the terms of their incoming CBA. However, GNC again rebuffed that the parties had already entered into an agreement when respondents submitted the purported final CBA draft of

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[48] *A. Soriano Aviation v. Employees Association of A. Soriano Aviation*, 612 Phil. 1093, 1103 (2009).

[49] ART. 248. *Unfair labor practices of employers*. — It shall be unlawful for an employer to commit any of the following unfair labor practice:

x x x x x x x x x

(g) To violate the duty to bargain collectively as prescribed by this Code;

x x x x x x x x x

the parties to the NCMB. Hence, respondents cannot be faulted into believing that GNC was bargaining in bad faith and had no genuine intention to comply with its duty to bargain collectively since it denied arriving at an agreement with respondents not once but twice. This belief in good faith prompted them to file a notice of strike. Clearly, respondents' intention was to protest what they perceived to be acts of unfair labor practice on the part of GNC through the exercise of their right to strike enshrined in the Constitution and not to circumvent the "no strike, no lock-out" clause and the grievance machinery and voluntary arbitration provision of the CBA.

GNC relies heavily on *University of San Agustin*.[50] According to it, the facts therein are similar if not identical to the facts of the present case. Hence, the Court's ruling in the said case squarely applies here.

In *University of San Agustin*, the University of San Agustin (the University) and the University of San Agustin Employees' Union (Union) entered into a five-year CBA in 2000. Complementary to the economic provisions of the said CBA is Section 3, Article 8 thereof which provides for salary increases for school years 2000-2003. Such salary increases shall take the form of either lump sum or a percentage of the tuition incremental proceeds (TIP). Moreover and just like in the present case, the parties' CBA therein contained a "no strike, no lock-out" clause, a grievance machinery procedure, and a voluntary arbitration mechanism.

When the parties were renegotiating the economic provisions of their CBA, they could not agree on the manner of computing the TIP. In view of this impasse, the Union declared a bargaining deadlock. When the Union filed a Notice of Strike before the NCMB, the University opposed the same by filing a Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration invoking the "no strike, no lock-out" clause of their CBA. The NCMB, however, failed to resolve the said motion. The parties then jointly requested the Secretary of Labor and

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[50] *Supra* note 34.

Employment to assume jurisdiction over the dispute. When the Secretary of Labor and Employment assumed jurisdiction, it proceeded to hear and decide on the dispute. Eventually, a Decision was rendered wherein the economic issues over which the parties had a deadlock in the collective bargaining were resolved, among others.

The CA, on *certiorari* petition, found merit in the University's argument that the Secretary of Labor abused his/her discretion in resolving the economic issues on the ground that the same were proper subject of the grievance machinery as embodied in the parties' CBA. Accordingly, the said court directed the parties to submit the economic issues to voluntary arbitration.

This Court affirmed the CA's ruling based on the following ratiocinations:

> We x x x find logic in the CA's directive for the herein parties to proceed with voluntary arbitration as provided in their CBA. As we see it, the issue as to the economic benefits, which included the issue on the formula in computing the TIP share of the employees, is one that arises from the interpretation or implementation of the CBA. To be sure, the parties' CBA provides for a grievance machinery to resolve any 'complaint or dissatisfaction arising from the interpretation or implementation of the CBA and those arising from the interpretation of enforcement of company personnel policies.' Moreover, the same CBA provides that should the grievance machinery fail to resolve the grievance or dispute, the same shall be 'referred to a Voluntary Arbitrator for arbitration and final resolution.' However, through no fault of the University these processes were not exhausted. It must be recalled that while undergoing preventive mediation proceedings before the NCMB, the Union declared a bargaining deadlock, filed a notice of strike and thereafter, went on strike. The University filed a *Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration* but the motion was not acted upon by the NCMB. As borne by the records, the University has been consistent in its position that the Union must exhaust the grievance machinery provisions of the CBA which ends in voluntary arbitration.

The University's stance is consistent with Articles 261 and 262 of the Labor Code, as amended which respectively provide[s]:

> Art. 261. *Jurisdiction of voluntary arbitrators or panel of voluntary arbitrators*. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a collective bargaining agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the collective bargaining agreement. For purposes of this Article, gross violations of a collective bargaining agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.
>
> The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the grievance machinery or voluntary arbitration provided in the collective bargaining agreement.
>
> Art. 262. *Jurisdiction over other labor disputes*. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

The grievance machinery and no strike, no lockout provisions of the CBA forged by the University and the Union are founded on Articles 261 and 262 quoted above. The parties agreed that practically all disputes — including bargaining deadlocks — shall be referred to the grievance machinery which ends in voluntary arbitration. Moreover, no strike or no lockout shall ensue while the matter is being resolved.

The University filed a *Motion to Strike Out Notice of Strike and to Refer the Dispute to Voluntary Arbitration* precisely to call the attention of the NCMB and the Union to the fact that the CBA provides for a grievance machinery and the parties' obligation to exhaust and honor said mechanism. Accordingly, the NCMB should have directed the Union to honor its agreement with the University

to exhaust administrative grievance measures and bring the alleged deadlock to voluntary arbitration. Unfortunately, the NCMB did not resolve the University's motion thus paving the way for the strike on September 19, 2003 and the deliberate circumvention of the CBA's grievance machinery and voluntary arbitration provisions.

As we see it, the failure or refusal of the NCMB and thereafter the [Secretary of Labor and Employment] to recognize, honor and enforce the grievance machinery and voluntary arbitration provisions of the parties' CBA unwittingly rendered said provisions, as well as Articles 261 and 262 of the Labor Code, useless and inoperative. As here, a union can easily circumvent the grievance machinery and previous agreement to resolve differences or conflicts through voluntary arbitration through the simple expedient of filing a notice of strike. On the other hand, management can avoid the grievance machinery and voluntary arbitration provisions of its CBA by simply filing a notice of lockout.[51]

It must be noted that under the facts of *University of San Agustin*, the dispute between the parties primarily involved the formula in computing the TIP share of the employees — one which clearly arose from the interpretation or implementation of the CBA. Pursuant to Article 261 of the Labor Code,[52] such a grievance falls under the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators. Even if otherwise, the dispute would still fall under the said

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[51] *Id.* at 413-415; citations omitted.

[52] Article 261. *Jurisdiction of Voluntary Arbitrators or panel of Voluntary Arbitrators.* — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

x x x x x x x x x

jurisdiction pursuant to Article 262[53] of the same Code since the parties agreed in their CBA that practically all disputes, including bargaining deadlock, shall be referred to grievance machinery that ends in voluntary arbitration.

It can safely be concluded, therefore, that the clear showing of the voluntary arbitrator's jurisdiction over the parties' dispute in *University of San Agustin* is the underlying reason why the Court upheld the CA's directive for the parties to proceed to voluntary arbitration in accordance with their CBA. After all, it is the declared policy of the State to promote and emphasize the primacy of voluntary arbitration as a mode of settling labor or industrial disputes.[54]

Contrary to GNC's contention, however, there is a marked difference between the facts of *University of San Agustin* and of the present case which makes the ruling in the former inapplicable to the latter. Unlike in *University of San Agustin,* the main cause of the dispute between the parties in this case, *i.e.*, GNC's alleged commission of unfair labor practice, did not arise from the interpretation or implementation of the parties' CBA, or neither from the interpretation or enforcement of company personnel policies. Hence, it does not fall under the original and exclusive jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators under the aforementioned Article 261. Be that as it may, GNC argues that since the grounds cited by respondents in their notice of strike come within the scope of "grievance" under the grievance resolution and voluntary arbitration provision of the parties' CBA, the same is cognizable by the voluntary arbitrator. Otherwise stated, since the parties allegedly agreed to submit a dispute of this kind to their CBA's grievance resolution procedure which ends in voluntary arbitration, it is the voluntary arbitrator which has jurisdiction in view of Article 262 of the Labor Code.

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[53] Article 262. *Jurisdiction over other labor disputes*. — The Voluntary Arbitrator or panel of Voluntary Arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

[54] Sec. 3, Article XIII, 1987 Constitution; Article 211 of the Labor Code.

The grievance resolution and arbitration provision of the parties' CBA provides in part, *viz.*:

17. Grievance Machinery

The parties hereto agree on the principle that all disputes between labor and management may be settled through friendly negotiations, that the parties have the same interest in the continuity of work until all matters in dispute shall have been discussed and settled in a manner to the mutual benefit of the parties herein, that an open conflict in any form involves losses to the parties, hence, all efforts must be exerted to avoid such an open conflict. In the furtherance of the foregoing principle, the parties agree to establish a procedure for the adjustment of any grievance to provide the widest opportunity for discussion of any dispute, request or complaint and establish the procedure for the processing and settlement of grievances.

A grievance is defined as any protest, misunderstanding or difference of opinion or dispute affecting the COLLEGE and the UNION or affecting any employee covered by this Agreement with respect to:

1. Meaning, interpretation, implementation or violation of any of the provisions of this Agreement;
2. Any matter directly relating or affecting the terms and conditions of employment including all personnel policies;
3. Dismissal, suspension and/or any other disciplinary action;
4. Any other matter or dispute which may arise and is not settled by means other than the grievance machinery.

x x x x x x x x x[55]

Plainly, a charge of unfair labor practice does not fall under the first three definition of grievance as above-quoted. Neither can it be considered as embraced by the fourth which at first blush, appears to be a "catch-all" definition of grievance because of the phrase "[a]ny other matter or dispute". It has been held that while the phrase "all other labor dispute" or its variant "any other matter or dispute" may include unfair labor practices,

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[55] Records, p. 83.

it is imperative, however, that the agreement between the union and the company states in unequivocal language that the parties conform to the submission of unfair labor practices to voluntary arbitration.[56] It is not sufficient to merely say that parties to the CBA agree on principle that "all disputes" or as in this case, "any other matter or dispute", should be submitted to the grievance machinery and eventually to the voluntary arbitrator. There is a need for an express stipulation in the CBA that unfair labor practices should be resolved in the ultimate by the voluntary arbitrator or panel of voluntary arbitrators since the same fall within a special class of disputes that are generally within the exclusive original jurisdiction of the Labor Arbiter by express provision of the law.[57] "Absent such express stipulation, the phrase '*all disputes*' [or "any other matter or dispute" for that matter] should be construed as limited to the areas of conflict traditionally within the jurisdiction of Voluntary Arbitrators, *i.e.*, disputes relating to contract-interpretation, contract-implementation, or interpretation or enforcement of company personnel policies. [Unfair labor practices cases] — not falling within any of these categories — should then be considered as a special area of interest governed by a specific provision of law."[58]

In the absence here of an express stipulation in the CBA that GNC and respondents agreed to submit cases of unfair labor practice to their grievance machinery and eventually to voluntary

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[56] *Vivero v. Court of Appeals*, 398 Phil. 158, 169 (2000), citing *San Miguel Corp. v. National Labor Relations Commission*, 325 Phil. 401 (1996).

[57] Art. 217 of the Labor Code provides in part:

Art. 217. Jurisdiction of Labor Arbiters and the Commission.

(a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide x x x the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practices cases;

x x x x x x x x x

[58] *Vivero v. Court of Appeals, supra* note 56 at 170.

arbitration, jurisdiction over the parties' dispute does not vest upon the voluntary arbitrator. The reason behind the ruling in *University of San Agustin* is therefore not attendant in this case and so does not find any application here. As it stands, the parties' dispute which centers on the charge of unfair labor practice is the proper subject of compulsory arbitration. In fact, GNC itself acknowledged in its June 24, 2010 letter to the Secretary of Labor and Employment that a charge of unfair labor practice in a notice of strike is ordinarily certified for compulsory arbitration.[59]

GNC further avers that under the parties' CBA, there are only two instances where compulsory arbitration may be resorted to, to wit: (1) at the grievance machinery level, if respondents are not satisfied with GNC's decision on a grievance; and, (2) at the voluntary arbitration level, when the parties cannot agree on the third member of the Arbitration Committee. GNC thus contends that submission of the parties' dispute to compulsory arbitration is but another violation of their agreement embodied in the CBA.

The argument is specious.

As expounded by both the NLRC and the CA, the Secretary of Labor and Employment's certification for compulsory arbitration of a dispute over which he/she has assumed jurisdiction is but an exercise of the powers granted to him/her by Article 263(g) of the Labor Code as amended. "[These] powers x x x have been characterized as an exercise of the police power of the State, aimed at promoting the public good. When the Secretary exercises these powers, he[/she] is granted 'great breadth of discretion' to find a solution to a labor dispute."[60] The Court

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[59] Records, p. 168. GNC stated, *viz.*: "Finally, although there is a charge of unfair labor practice in the Unions' Notice of Strike, *which matter should ordinarily be certified for compulsory arbitration*, the records will indubitably show — apart from the baselessness of the charge — that the proximate cause of the labor dispute is the parties['] differences in collective bargaining. (Emphasis supplied)

[60] *Steel Corporation of the Philippines v. SCP Employees Union-National Federation of Labor Unions*, 574 Phil. 716, 732 (2008).

therefore cannot subscribe to GNC's contention since to say that compulsory arbitration may only be resorted to in instances agreed upon by the parties would limit the power of the Secretary of Labor and Employment to certify cases that are proper subject of compulsory arbitration. The great breadth of discretion granted to the Secretary of Labor and Employment for him/her to find an immediate solution to a labor dispute would unnecessarily be diminished if such would be the case.

In view of the above discourse, the Court finds that the Secretary of Labor and Employment correctly certified the parties' dispute to the NLRC for compulsory arbitration.

*GNC engaged in bad faith bargaining and thus violated its duty to bargain.*

GNC insists that it is not guilty of bad faith bargaining nor did it commit any violation of its duty to bargain by pointing out that it consistently engaged in negotiations with the respondents both at the plant and NCMB levels. It underscores that following its submission of a counter-proposal to the NCMB, it even manifested that it was willing to negotiate on a marathon basis. This negates any ill will, bad faith, fraud or conduct oppressive to labor on its part. In any case, there is no truth to respondents' assertion that the parties have already reached an agreement when GNC submitted a counter-proposal. Hence, it cannot be said that GNC engaged in dilatory tactics to avoid the signing of the CBA since there was yet no final agreement to speak of. GNC likewise justifies its submission of counter-proposal asserting that the same was necessary in view of the chronic financial situation of GNC, the need to conclude a separate CBA for GNCFLU and GNCNTMLU, and in order to introduce thereon improved provisions for the mutual benefit of the parties.

The duty to bargain collectively is defined under Article 252 of the Labor Code to, *viz.*:

> **ARTICLE 252.** ***Meaning of duty to bargain collectively***. — The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and expeditiously **in good faith** for the purpose of negotiating an agreement with respect to

wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreements and executing a contract incorporating such agreements if requested by either party but such duty does not compel any party to agree to a proposal or to make any agreement. (Emphasis supplied)

"It has been held that the crucial question whether or not a party has met his statutory duty to bargain in good faith typically turns on the facts of the individual case. There is no *per se* test of good faith in bargaining. Good faith or bad faith is an inference to be drawn from the facts."[61] "The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole x x x."[62]

Here, the collective conduct of GNC is indicative of its failure to meet its duty to bargain in good faith. Badges of bad faith attended its actuations both at the plant and NCMB levels.

At the plant level, GNC failed to comply with the mandatory requirement of serving a reply/counter-proposal within 10 calendar days from receipt of a proposal,[63] a fact which by itself is already an indication of lack of genuine interest to bargain.[64] Then, it led respondents to believe that it was doing away with the reply/counter-proposal when it proceeded to just

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[61] *The Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, 346 Phil. 524, 534 (1997).

[62] *Id.*

[63] Article 250 of the Labor Code provides:

Article 250. *Procedure in collective bargaining*. — The following procedures shall be observed in collective bargaining:

(a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;

x x x x x x x x x

[64] *General Milling Corporation v. Court of Appeals, supra* note 39 at 135.

orally discuss the economic terms. After a series of negotiation meetings, the parties finally agreed on the economic terms which based on the records was the only contentious issue between them. In fact, in their meeting of August 24, 2009, Rodriguez, in her capacity as member of the management panel, already announced the benefits included under the CBA for 2009-2014.[65] She then stated that the signing thereof would be underway. In the days that followed, however, GNC ignored the follow-ups made by respondents regarding the signing. It then suddenly capitalized on the fact that it had not yet submitted a reply/ counter-proposal and thereupon served one upon respondents despite the parties already having reached an agreement.

It could not be any clearer from the above circumstances that GNC has no genuine intention to comply with its duty to bargain. It merely went through the motions of negotiations and then entered into an agreement with respondents which turned out to be an empty one since it later denounced the same by submitting a reply/counter-proposal. Worse, when respondents tried to clear out matters with the GNC President through their letter of January 8, 2010, GNC did not even bother to respond.

To persuade the Court that no agreement has yet been reached by the parties, GNC refers to the minutes of the October 9, 2009 meeting indicating that the economic benefits were still to be discussed with the President of GNC. GNC takes this to mean that the economic benefits were at that time still subject to the approval of the GNC President and, hence, not yet final. The Court, however, notes that GNC conveniently disregarded not only the previous minutes of the parties' meetings but also the other significant portions of the October 9, 2009 minutes it alluded to. The minutes of the meeting held on August 24, 2009 clearly shows that Rodriguez categorically announced and enumerated all the benefits "given by the school in the CBA 2009-2014."[66] Plainly, this means that the announced benefits were already approved by GNC. On the other hand, the minutes of the meeting on October 09, 2009 states in full:

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[65] See Minutes of the Meeting, records, p. 312.

[66] *Id.*

III. [Ms. Rodriguez] cited all the benefits of the permanent faculty and covered employees granted in the previous CBAs.

She requested to [sum] up all these benefits and privileges including the [additional benefits] acquired on this present CBA [which shall] be discussed with the President, **so next time we will be on the signing.**[67] (Emphasis supplied)

Nowhere from the afore-quoted minutes of the meeting can it be deduced that the terms of the CBA is still subject to the approval of the GNC President. There is no clear showing that the purpose of discussing the economic benefits with him is to secure his approval thereto. If at all, the purported discussion appears to be a mere formality since the signing of the CBA was not made dependent to the result of the discussion with him. As can be seen, the statement that "next time they will be on the signing" is clearly unqualified. Indubitably, all indications lead to the conclusion that the parties already agreed on the terms of the CBA and it was only the execution thereof that needs to be done.

Anent GNC's claim that it was suffering from financial difficulties which according to it was one of the reasons why it saw the need to submit a counter-proposal, suffice it to say that GNC should have squarely raised this early on in the negotiations. After all, the employer's duty to negotiate in good faith with its employees consists of matching the latter's proposals, if unacceptable, with counter-proposals, and of making every reasonable effort to reach an agreement.[68] There must be common willingness among the parties to discuss freely and fully their respective claims and demands and, when these are opposed, to justify them on reason.[69] However, instead of laying all its card on the table, GNC for reasons only known to it, chose to forego the opportunity of discussing its claimed financial predicament

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[67] *Id.* at 313.

[68] *Herald Delivery Carriers Union v. Herald Publication, Inc.,* 154 Phil. 662, 669 (1974).

[69] *Id.*

with respondents as shown by the following: (1) GNC did not submit a reply/counter-proposal within 10 calendar days from its receipt of respondents' proposed CBA on April 3, 2009 as required by law; (2) while it later manifested through a letter dated May 27, 2009 that it is not inclined to grant the economic provisions in respondents' proposal, it did not fully discuss or explain to respondents its claimed opposition; (3) Atty. Sampang did not make good on the promise he made in the meeting of June 16, 2009 that GNC would submit its counter-proposal to respondents' economic provisions with the corresponding explanation;[70] and, (4) as shown by the minutes of the meetings, the members of the management panel simply made general statements that GNC was having financial difficulties but failed to elaborate on the same. As it is, GNC allowed itself to go through the process of negotiating with respondents without fully discussing its financial status and despite this, knowingly entered into an agreement with them. It cannot, therefore, be allowed to later interpose an opposition to the terms of the CBA based on financial incapacity by belatedly submitting a counter-proposal, which from the circumstances, is an obvious attempt to stall what would have been the last step of the process — the execution of the CBA. The Court cannot be expected to affix its imprimatur to such a dubious maneuver.[71]

With respect to GNC's assertion that its submission of a counter-proposal was also impelled by the need to conclude a separate CBA for GNCFLU and GNCNTMLU and to improve certain provisions, records reveal that during the negotiations at the plant level, GNC did not at all entertain this idea. This explains why the matter was not brought to fore during the negotiations therein. The idea was only introduced to GNC by Atty. Padilla when the former asked him to evaluate the final draft of the CBA submitted by respondents to the NCMB. Eventually, the same was used as a ground for GNC's opposition

[70] Records, p. 307.

[71] *Kiok Loy v. National Labor Relations Commission*, 225 Phil. 138, 146 (1986).

to the said final draft as contained in the counter-proposal that GNC submitted to the NCMB. The matter, however, loses its significance in the light of the Court's succeeding discussion as to the inopportune submission of the said counter-proposal.

The over-all conduct of GNC at the plant level, without a doubt, illustrates bad faith bargaining. And as already stated, this display of bad faith continued even at the NCMB.

True, GNC participated in the conciliation meetings in the NCMB. In fact, the minutes of the proceedings would show that the parties were able to settle certain matters about the signing bonus.[72] Further, during the April 15, 2010 conciliation/meeting, it was agreed that respondents will come up with the "final draft" of the parties to be submitted to the NCMB and copy furnished GNC.[73] Respondents complied with the said undertaking such that the minutes of the May 14, 2010 conciliation/meeting reveals that the only thing left for the parties to do was to go over the details of the final draft of the CBA for fine-tuning.[74]

However, GNC again engaged itself in the scheme of denying that the parties have already reached an agreement. It denies that the draft submitted by the respondents to the NCMB was the parties' final draft. It instead asserts that the document was merely respondents' draft which was still subject to GNC's consideration. The Court, however, finds no merit in this assertion since as shown above, the minutes of the proceedings before the NCMB reveal otherwise.

As proof of its claimed faithful intention to comply with its duty to bargain, GNC asserts that it even manifested before the NCMB that it was willing to negotiate on a marathon basis following its submission of a counter-proposal. Suffice it to say, however, that such manifestation, as well as the said counter-proposal, already came too late in the day since at that point

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[72] Minutes dated March 29, 2010, CA *rollo*, p. 358.

[73] Minutes dated April 15, 2010, *id.* at 359.

[74] Minutes dated May 14, 2010, *id.* at 361.

there already exists a "final draft" submitted by the respondents in accordance with the understanding reached by the parties in the conciliation/meetings conducted by the NCMB.

In view of the foregoing, the Court finds that GNC engaged in bad faith bargaining and by the same violated its duty to bargain collectively as mandated by law.

Before turning to the next issue, however, the Court finds proper to pass upon the matter of GNC's unilateral withdrawal of employee's benefits as found by the NLRC. GNC laments that while it squarely raised this matter before the CA, the said court ignored the same.

Guided by the basic rule that he who alleges must prove,[75] the Court finds that respondents failed to substantiate its claim that GNC unilaterally stopped the release of certain benefits to its employees. All that respondents advanced were bare allegations without any proof. On the other hand, GNC was able to show that benefits such as clothing benefit[76] and annual retreat were already extended to its employees. The protégé benefit, although subjected to stricter implementation guidelines, was likewise still in effect.[77] And while rice assistance was last given in December 2009, the grant of the same was shown to be on a best effort basis.[78] Notably, respondents were not able to refute GNC's explanation. Thus, the Court finds the charge of unilateral withdrawal of benefits against GNC without basis. Be that as it may, let it be made clear that this does not have any effect and therefore does not change the finding that GNC committed a violation of its duty to bargain as extensively discussed above.

*The final CBA draft submitted by respondents to the NCMB was correctly imposed by the NLRC as the parties'*

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[75] *Lim v. Equitable PCI Bank*, 724 Phil. 453, 454 (2014).

[76] Records, pp. 244-245.

[77] *Id.* at 242-243.

[78] *Id.* at 250.

*CBA for the period June 1, 2009 to May 31, 2014.*

In the cases of *Kiok Loy*,[79] *Divine Word University of Tacloban v. Secretary of Labor and Employment*,[80] and *General Milling Corporation*,[81] the Court unilaterally imposed upon the employers the CBAs proposed by the unions after the employers were found to have violated their duty to bargain collectively. This is on the premise that the said employers, by their acts which bespeak of insincerity, had lost their statutory right to negotiate or renegotiate the terms and conditions contained in the unions' proposed CBAs.

Here, the Court finds nothing wrong in the pronouncement of the NLRC that the final CBA draft submitted by respondents to the NCMB should serve as the parties' CBA for the period June 1, 2009 to May 31, 2014. More than the fact that GNC is the erring party in this case, records show that the said draft is actually the final CBA draft of the parties which incorporates their agreements. Indeed and as held by the NLRC, fairness, equity and social justice are best served if the said final CBA draft shall govern their industrial relationship.

All told, the Court finds that the CA correctly affirmed the ruling of the NLRC and denied GNC's Petition for *Certiorari* for lack of merit.

**WHEREFORE,** the Petition is hereby **DENIED**. The assailed Decision dated September 26, 2012 and Resolution dated December 3, 2012 of the Court of Appeals in CA-G.R. SP No. 120669 are **AFFIRMED**.

**SO ORDERED.**

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

*Mendoza, J.,* on official leave.

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[79] *Supra* note 71.

[80] G.R. No. 91915, September 11, 1992, 213 SCRA 759.

[81] *Supra* note 39.

**THIRD DIVISION**

[G.R. No. 206927. July 13, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **DARIUS RENIEDO *y* CAUILAN,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; THE SUBSTANTIAL EVIDENTIARY GAPS IN THE CHAIN OF CUSTODY OF THE SEIZED DRUGS PUT INTO QUESTION THE RELIABILITY AND EVIDENTIARY VALUE OF THEIR CONTENTS.—** We reiterate the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting the required quantum of evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not need to present evidence on its behalf, the presumption prevails and the accused should be acquitted. x x x In illegal drug cases, the identity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt. x x x The chain-of-custody rule is a method of authenticating evidence, by which the *corpus delicti* presented in court is shown to be one and the same as that which was retrieved from the accused or from the crime scene. x x x The substantial evidentiary gaps in the chain of custody of the seized drugs put into question the reliability and evidentiary value of their contents – whether these drugs are the same ones brought to the laboratory for examination, found positive for *shabu* and then presented before the RTC.

2. **ID.; ID.; ID.; REQUIREMENTS OF PHYSICAL INVENTORY AND PHOTOGRAPH-TAKING OF THE SEIZED DRUGS; NON-COMPLIANCE WITHOUT JUSTIFIABLE EXPLANATION TAINTED THE IDENTITY AND INTEGRITY OF THE DRUGS USED AS EVIDENCE.—** The required procedure on the seizure and custody of drugs

embodied in Section 21 of R.A. 9161 ensures the identity and integrity of dangerous drugs seized. The provision requires that upon seizure of the illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof. The Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. x x x In the present case, the requirements of physical inventory and photograph-taking of the seized drugs were not observed. This non-compliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Section 5 and Section 11 of R.A. No. 9165 were the same ones that were allegedly seized from appellant. x x x R.A. No. 9165 and its implementing rules and regulations both state that non-compliance with the procedures would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved. A review of the records yielded no explanation nor justification tendered by the apprehending team for their non-compliance with the procedure laid down by Section 21, Article II of R.A. No. 9165. x x x [Thus,] the identity and integrity of the drugs used as evidence against appellant are necessarily tainted. x x x When the courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## DECISION

**PEREZ, *J*.:**

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR HC No. 04693 dated 29 June 2012, which denied the appeal of appellant Darius Reniedo *y* Cauilan and affirmed the Decision[2] dated 29 January 2010 of the Regional Trial Court (RTC) of Pasig City, Branch 68, in Criminal Case Nos. 13467-D and 13468-D, finding appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The prosecution built its case on the theory that the police officers apprehended appellant during a buy-bust operation. During said buy-bust operation, appellant allegedly sold one (1) plastic sachet of *shabu* to poseur buyer while a search on appellant's person yielded two (2) plastic sachets of *shabu* which the police seized.

Police Officer 1 Gener A. Antazo (PO1 Antazo) of the San Juan Police Station Drug Enforcement Unit, was the lone witness for the prosecution. Following are the facts according to the prosecution:

On 27 April 2004, around quarter past the hour of five in the afternoon, PO1 Antazo received a phone call from his confidential informant that a person was selling *shabu* in Tuberias Street, *Barangays* Perfecto and Batis, San Juan. The illegal drugs seller was described as male, shirtless, wearing khaki shorts, with a handkerchief tied around his head. PO1 Antazo relayed this information to his chief, Police Inspector Ricardo de Guzman, who then instructed the former together with PO2 Paolo Tampol, PO2 Neil Edwin Torres (PO2 Torres) and PO3

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[1] *Rollo*, pp. 2-19; Penned by Associate Justice Normandie B. Pizarro with Associate Justices Rebecca De Guia-Salvador and Rodil V. Zalameda concurring.

[2] Records, pp. 168-172; Penned by Presiding Judge Santiago G. Estrella.

Paolo Marayag to conduct a buy-bust operation. PO1 Antazo was designated as *poseur buyer* and was given two (2) Fifty Peso (₱50.00)-bills as buy-bust money, both marked with "x" at the dorsal portion.[3]

PO1 Antazo and the team proceeded to the target area. They parked their vehicle at a nearby street and walked through an alley to get to Tuberias Street. PO1 Antazo then met with his informant who led him to a group of men playing "*tong its*," a card game. PO1 Antazo approached appellant and told him, "*Pare, paiskor*," to which appellant asked in reply, "*Ilan*?" PO1 Antazo replied, "*Piso lang*," literally One Peso (₱1.00) only but really meant One Hundred Pesos (₱100.00) only. Appellant took the money from PO1 Antazo while handing the latter a plastic sachet containing white crystalline substance believed to be *shabu*. PO1 Antazo scratched his head, the pre-arranged signal for the other members of the team to rush to the scene. PO1 Antazo introduced himself as a police officer and arrested appellant. When asked to empty his pocket, a *Clorets* candy case containing two (2) more plastic sachets containing white crystalline substance suspected to be *shabu* was recovered from appellant. The buy-bust money was also recovered from his person. The sachets were accordingly marked while appellant was handcuffed and brought to the San Juan Police Station. At the police station, PO1 Antazo prepared the booking sheet and arrest report and handed the seized drugs to PO1 Rio G. Tuyay and then turned them over to the crime laboratory.[4] The laboratory examination on the sachets yielded positive results for the presence of *Methamphetamine Hydrochloride*, a dangerous drug.[5]

Appellant was charged with violation of Sections 5 and 11 of Article II of R.A. No. 9165, to wit:

CRIMINAL CASE NO. 13467-D

That, on or about the 27th day of April 2004, in the Municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction

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[3] TSN, 3 May 2005, pp. 6-15.

[4] *Id*. at 15-29.

[5] Records, p. 156; Physical Science Report No. D-0407-04E, Exhibit "C".

of this Honorable Court, the above-named accused, without being authorized by law, did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another 0.04 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride, also known as *shabu*, a dangerous drug, in consideration of Php100.00, and in violation of the above-cited law.[6]

CRIMINAL CASE NO. 13468-D

That, on or about the 27th day of April 2004, in the Municipality of San Juan, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess any dangerous drug, did, then and there willfully, unlawfully and knowingly possess 0.06 gram and 0.06 gram, respectively, or a total of 0.12 gram of white crystalline substance separately contained in two (2) heat-sealed transparent plastic sachets, which was found positive to the test for Methylamphetamine Hydrochloride commonly known as "*shabu*", a dangerous drug, in violation of the above-cited law.[7]

Upon arraignment, appellant pleaded not guilty to the offenses charged. Joint trial ensued.

The defense presented a different version of the incident.

Appellant testified that on the date of the alleged buy-bust operation, around four o'clock in the afternoon, he was playing cards with two (2) of his neighbors when four police officers arrived and attempted to frisk them. He had known two of the men as police officers as they frequented the place to make arrests. Appellant initially refused to be searched but later agreed when chided by one of the officers that he would not reject said search if he had nothing to hide. The police officers then invited appellant and his two (2) neighbors to the police station where they were separately interviewed. PO2 Torres tried to extort ₱15,000.00 from appellant in exchange for the non-filing of charges against him. Appellant denied this offer which response

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[6] *Id.* at 1.

[7] *Id.* at 59.

so infuriated PO2 Torres that he incarcerated appellant. The next day, appellant was subjected to inquest proceedings for violation of Sections 5 and 11, Article II of R.A. No. 9165.[8]

After trial on the merits, the RTC rendered a Decision on 29 January 2010, the dispositive portion of which states:

> **WHEREFORE**, premises considered, the [c]ourt hereby renders judgment finding the accused **DARIUS RENIEDO *y* Cauilan "GUILTY"** on both charges beyond reasonable doubt for violation of Section 5 (Sale), Article II of RA 9165 and sentences him to suffer the penalty of ***Reclusion Perpetua*** and to pay the fine of Php500,000.00 and for violation of Section 11 (Possession), Article II of RA 9165 and sentences him to suffer the penalty of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine of Php300,000.00. All items confiscated in these cases are ordered forfeited in favor of the government.[9]

The RTC ruled that through the lone and uncorroborated testimony of PO1 Antazo, the prosecution was able to establish the concurrence of all the elements of illegal sale and possession of dangerous drugs. The RTC held that the witness, being a police officer, enjoyed the presumption of regularity in the performance of his duties; and that his credibility was strengthened when the accused opted to utilize the inherently weak defenses of denial and frame-up.

Before the Court of Appeals, appellant again asserted that there were gaps in the chain of custody of the seized drugs and decried the non-observance of the requirements of Section 21, R.A. No. 9165 by the police officers. The Court of Appeals ruled that there had been compliance with the requirements of the law and that the integrity and the evidentiary value of the seized drugs have been preserved. The Court of Appeals however modified the penalties. In Criminal Case No. 13467-D, the appellate court changed the penalty from *reclusion perpetua* to life imprisonment in accordance with law; while in Criminal Case No. 13468-D, appellant was meted out the indeterminate

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[8] TSN, 24 November 2009, pp. 3-6.

[9] Records, p. 172.

sentence of Twelve (12) years and One (1) day, as minimum, to Fourteen (14) years, as maximum.[10]

On final review before this Court, after due consideration, we resolve to acquit appellant on the ground of reasonable doubt.

We reiterate the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting the required quantum of evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not need to present evidence on its behalf, the presumption prevails and the accused should be acquitted.[11]

We find that the RTC and the Court of Appeals failed to consider the break in the chain of custody of the seized drugs and the serious infirmity of the buy-bust team's non-observance of the rules of procedure for handling illegal drug items. In illegal drugs cases, the identity of the drugs seized must be established with the same unwavering exactitude as that required to arrive at a finding of guilt.[12] The case against appellant hinges on the ability of the prosecution to prove that the illegal drug presented in court is the same one that was recovered from the appellant upon his arrest.[13] This requirement arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[14]

The chain-of-custody rule is a method of authenticating evidence, by which the *corpus delicti* presented in court is shown to be one and the same as that which was retrieved from the

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[10] *Rollo*, pp. 14-18.

[11] *People v. Sabdula*, G.R. No. 184758, 21 April 2014, 722 SCRA 90, 98.

[12] *Mallillin v. People*, 576 Phil. 576, 586 (2008).

[13] *People v. Torres*, 710 Phil. 398, 408 (2013).

[14] *People v. Sabdula*, *supra* note 11.

accused or from the crime scene.[15] The records in the instant case only show that PO1 Antazo marked the illegal drugs seized from appellant and turned them over to PO1 Rio Tuyay who made the request for the laboratory examination of the same.[16] The records do not show who had custody of the seized drugs in transit from the crime scene to the police station; who actually delivered the same to the crime laboratory and who received it there; and who had possession and custody of the same after laboratory examination and pending presentation as evidence in court. These crucial details were nowhere to be found in the records. Curiously, PO1 Antazo was the prosecution's sole witness who testified on the supposed trail of the custody of illegal drugs from seizure to presentation in court. And PO1 Antazo's very testimony is telling of the maladroit handling of the contraband, to wit:

PROSEC. GARAFIL —

After marking the "shabu" and the plastic casing of clorets, what did you do?

WITNESS —

We brought it to the crime laboratory. First, I turned it over to the investigator and then the investigator made a request and I turned it over to the crime laboratory for investigation, ma'am.

PROSEC. GARAFIL —

Who is the investigator?

WITNESS —

PO1 Tuyay, ma'am.

PROSEC. GARAFIL —

Do you know if the shabu and the cloret plastic casing were brought to the crime laboratory?

WITNESS —

Yes, ma'am.

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[15] *People v. Abdul,* G.R. No. 186137, 26 June 2013, 699 SCRA 765, 774.

[16] TSN, 3 May 2005, pp. 27-28.

PROSEC. GARAFIL —

Do you know who brought this specimen?

WITNESS —

I could not remember who my companion was but I was with him, ma'am.[17]

The substantial evidentiary gaps in the chain of custody of the seized drugs put into question the reliability and evidentiary value of their contents — whether these drugs are the same ones brought to the laboratory for examination, found positive for *shabu* and then presented before the RTC. The Court of Appeals thus gravely erred in ruling that there was an unbroken chain of custody simply because the illegal drugs have been marked, sent to the crime laboratory for analysis, and found positive for *shabu*, despite the fact that the integrity of the confiscated items throughout the entire process had never been established.

The required procedure on the seizure and custody of drugs embodied in Section 21 of R.A. 9161 also ensures the identity and integrity of dangerous drugs seized. The provision requires that upon seizure of the illegal drug items, the apprehending team having initial custody of the drugs shall (a) conduct a physical inventory of the drugs and (b) take photographs thereof (c) in the presence of the person from whom these items were seized or confiscated and (d) a representative from the media and the Department of Justice and any elected public official (e) who shall all be required to sign the inventory and be given copies thereof.

The Court has emphasized the import of Section 21 as a matter of substantive law that mandates strict compliance. The Congress laid it down as a safety precaution against potential abuses by law enforcement agents who might fail to appreciate the gravity of the penalties faced by those suspected to be involved in the sale, use or possession of illegal drugs. Under the principle that penal laws are strictly construed against the government, stringent compliance therewith is fully justified.[18]

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

[18] *Rontos v. People*, 710 Phil. 328, 335 (2013).

In the present case, the requirements of physical inventory and photograph-taking of the seized drugs were not observed. This non-compliance raises doubts whether the illegal drug items used as evidence in both the cases for violation of Section 5 and Section 11 of R.A. No. 9165 were the same ones that were allegedly seized from appellant.

The apprehending team never conducted an inventory nor did they photograph the seized drugs in the presence of the appellant or his counsel, a representative from the media and the Department of Justice, or an elective official either at the place of the seizure, or at the police station. In *People v. Gonzales*,[19] this Court acquitted the accused based on reasonable doubt due to the failure of the police to conduct an inventory and to photograph the seized plastic sachet. We explained therein that "the omission of the inventory and the photographing exposed another weakness of the evidence of guilt, considering that the inventory and photographing — to be made in the presence of the accused or his representative, or within the presence of any representative from the media, Department of Justice or any elected official, who must sign the inventory, or be given a copy of the inventory — were really significant stages of the procedures outlined by the law and its IRR."[20]

R.A. No. 9165 and its implementing rules and regulations both state that non-compliance with the procedures would not necessarily invalidate the seizure and custody of the dangerous drugs provided there were justifiable grounds for the non-compliance, and provided that the integrity of the evidence of the *corpus delicti* was preserved.

A review of the records yielded no explanation nor justification tendered by the apprehending team for their non-compliance with the procedure laid down by Section 21, Article II of R.A. No. 9165. Considering that the non-compliance with the requirements of Section 21 in the case at bar had not been

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[19] 708 Phil. 121 (2013).

[20] *Id.* at 132.

explained nor justified, the identity and integrity of the drugs used as evidence against appellant are necessarily tainted. *Corpus delicti* is the actual commission by someone of the particular crime charged. In illegal drugs cases, it refers to illegal drug itself. When the courts are given reason to entertain reservations about the identity of the illegal drug item allegedly seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt.[21] Unexplained non-compliance with the procedures for preserving the chain of custody of the dangerous drugs has frequently caused the Court to absolve those found guilty by the lower courts.[22] The procedural lapses by the police put in doubt the identity and evidentiary value of the seized drugs, taint the performance undertaken by the police and effectively negate the presumption of regularity in the performance of their duties that they are given the privilege to enjoy.

**WHEREFORE,** the Decision dated 29 June 2012 of the Court of Appeals in CA-G.R. CR-HC No. 04693 is **REVERSED and SET ASIDE**. Darius Reniedo *y* Cauilan is hereby **ACQUITTED** of the crime of violation of Sections 5 and 11, Article II of Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) on the ground of reasonable doubt. The Director of the Bureau of Corrections is hereby **ORDERED** to immediately **RELEASE** appellant from custody unless he is detained for some other lawful cause.

**SO ORDERED.**

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

*Reyes, J.,* on wellness leave.

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[21] *Rontos v. People, supra* note 18 at 336-337.

[22] *People v. Gonzales, supra* note 19 at 133 citing *People v. Robles*, 604 Phil. 536 (2009); *People v. Alejandro*, 671 Phil. 33 (2011); *People v. Salonga*, 617 Phil. 997 (2009); *People v. Gutierrez*, 614 Phil. 285 (2009); *People v. Cantalejo*, 604 Phil. 658 (2009).

[*] Additional Member per Raffle dated 13 June 2016.

**THIRD DIVISION**

[G.R. No. 211028. July 13, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JONATHAN ARCILLO,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** For a charge of rape under Article 266-A of the Revised Penal Code (RPC) to prosper, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.

2. **ID.; ID.; ID.; FAILURE TO SHOUT FOR HELP AND DELAY IN REPORTING THE CRIME DO NOT NEGATE RAPE.—** The failure of AAA to shout for help and her delay in reporting the rape incident do not negate rape. We have consistently ruled that failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent. Moreover, delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant.

3. **ID.; ID.; ID.; PENALTY FOR SIMPLE RAPE.—** At the time of the rape incident, AAA was only 14 years old. However, the qualifying circumstance of relationship was not proven. Thus, appellant was correctly convicted of the crime of simple rape. Both courts correctly imposed the penalty of *reclusion perpetua.* The awards of civil indemnity, moral damages and exemplary damages must be increased to ₱75,000.00 each in line with prevailing jurisprudence. Interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**R E S O L U T I O N**

**PEREZ, *J.*:**

On appeal is the 25 July 2013 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01011 affirming the conviction of appellant Jonathan Arcillo for the crime of qualified rape.

The Information[2] charging appellant with rape reads:

> That on the 1st day of November 2004 at 1:00 o'clock in the afternoon, more or less at Sitio Basiao, Barangay Canang, Oslob, Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA],[3] a [16] years old minor, against her will and consent.

Appellant entered a not guilty plea. Trial ensued.

The evidence for the prosecution shows that AAA lived with her grandfather CCC. Appellant is AAA's uncle, he being the husband of AAA's aunt. At around 1:00 p.m. on 1 November 2004, CCC ordered AAA to gather food for the pigs. AAA went near the house of appellant where she filled up the sack with leaves of a tree. Thereat, appellant called AAA from his house but AAA ignored him. Appellant then went out of his house. He approached AAA from behind, wrestled her, tied her

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[1] *Rollo*, pp. 3-19; Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

[2] Records, pp. 1-2.

[3] The real name of the victim is withheld to protect her privacy. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

mouth with a cloth and threatened to kill her with a *pinuti*, a long bladed weapon. Appellant forced her to lie down and then stripped her of her underwear. Appellant then mounted on top of AAA and inserted his penis into her vagina.[4]

According to CCC, AAA went home after gathering the feeds. He noticed that she looked weak. CCC did not bother to ask AAA until his daughter, the wife of appellant, informed him that her husband raped AAA.[5]

Upon learning of the incident, AAA's mother, BBB accompanied AAA directly to the police station, and then they proceeded to the hospital to have AAA examined.[6]

AAA was born on 7 December 1987 and she was sixteen years old on the date of the rape incident.

The Medico-Legal Certificate reveals the following findings:

> Multiple healed skin lesions upper and lower extremities,
> The anal genitalia examination showed external genitalia.
> Medical evaluation suggestive of sexual abuse[7]

Appellant denied that he raped AAA. Appellant narrated that on the date it was done, he and his wife were on the farm at 8:00 a.m. They went home to have lunch from 11:00 a.m. to 12:00 p.m. They went back to the farm after lunch until 5:00 p.m. Appellant denied raping AAA and claimed that he does not know her. During the cross-examination, appellant testified that he and his wife were at the cemetery visiting relatives at 8:00 a.m. on 1 November 2004. They went home at 3:00 p.m. The trial court judge asked clarificatory questions which led to appellant admitting that he knew AAA but denied knowing CCC.[8]

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[4] TSN, 24 January 2006, pp. 5-13; TSN, 10 January 2006, pp. 6-7.

[5] TSN, 7 February 2000, pp. 4-6.

[6] TSN, 31 January 2006, pp. 3-5.

[7] CA *rollo*, p. 86; Records, p. 33.

[8] TSN, 24 January 2008, pp. 5-14.

On 16 February 2009, the RTC convicted appellant of rape. The *fallo* of the Decision[9] reads:

> WHEREFORE, in view of the aforegoing, this Court finds accused Jonathan Arcillo GUILTY beyond reasonable doubt for the commission of RAPE and hereby sentences him to suffer the following penalty of RECLUSION PERPETUA which carries an accessory penalty of civil interdiction for the duration of the period of the sentence and perpetual disqualification. He is also liable to pay moral damages to the private complainant in the amount of Php75,000.00 and exemplary damages in the amount of Php25,000.00.[10]

The RTC found that the positive assertion of AAA is more credible than the denial of appellant. The trial court also observed that appellant's alibi has two versions: first, that he was on the farm; and second, he was at the cemetery. The trial court noted that appellant failed to present his wife to corroborate his statement.

Appellant filed a Notice of Appeal but on 25 July 2013, the Court of Appeals affirmed the trial court's ruling but modifying it as to damages, to wit:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The *Decision* dated February 16, 2009 of the Regional Trial Court (RTC), Branch 62, Oslob, Cebu in Criminal Case No. OS-05-371 finding accused-appellant Jonathan Arcillo ("*Arcillo*") guilty beyond reasonable doubt for the crime of Rape in relation to Republic Act (RA) No. 7610, is hereby **AFFIRMED** with the **MODIFICATIONS** as to damages.
>
> Accused-appellant Jonathan Arcillo is ordered to pay victim AAA Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages and Thirty Thousand Pesos (₱30,000.00) as exemplary damages, all with interest at the rate of 6% per annual from the date of finality of this judgment. No costs.[11]

The Court of Appeals found no reason to deviate from the prior assessment of the RTC on the credibility of AAA. According

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[9] Records, pp. 84-91.

[10] *Id.* at 91.

[11] *Rollo*, p. 18.

to the Court of Appeals, the testimony of AAA is supported by the physician's finding of penetration. The Court of Appeals convicted appellant of simple rape because the qualifying circumstance of relationship was not present when CCC admitted that appellant's wife is only his niece, thus, appellant cannot be AAA's uncle by affinity within the third civil degree.

In his Brief,[12] appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He insists that the testimony of AAA is improbable and incredulous. According to appellant, AAA's claim that she was raped in an open field is impossible because many people pass by the area to gather feeds and would have seen them. Appellant claims that AAA's failure to shout for help is suspicious and her failure to immediately inform her grandfather of the alleged rape should render her story impossible.

We dismiss the appeal.

The RTC found AAA's testimony to be credible and noted that it was positive, direct and straightforward. The Court of Appeals agreed that AAA's testimony was straightforward and categorical. The determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, as in this case, is accorded full weight and credit as well as great respect, if not conclusive effect.

Indeed, AAA clearly testified that she was raped:

FISCAL ELESTERIO:

Q: Can you still recall, where were you on the afternoon of November 01, 2004, at 1:00 o'clock in the afternoon?
A: Yes, I was getting feeds for the pigs.

Q: Now, where was that place when you got the feeds for the pig;
A: Near the house of Jonathan.

Q: This Jonathan Arcillo the one accused in this case?
A: Yes, sir.

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[12] CA *rollo*, pp. 20-29.

Q: Is he inside the Court room now?
A: Yes, Sir.

Fiscal Elesterio (to witness)

Q: Will you please point to us this Jonathan Arcillo?
A: At this juncture, the witness is pointing a person in an orange CPDRC uniform when he (sic) asked his name he answered Jonathan Arcillo.

Q: Now, Madam witness when you were at the place new the house of Jonathan Arcillo, what happened there?
A: He wrestled me.

Q: After the accused wrestled you what happened next?
A: He tied out my mouth.

Q: With what Madam witness?
A: A cloth, Sir.

Q: After that what happened next?
A: He threatened me.

Q: After he threatened you what happened next?
A: He threatened to kill me.

Fiscal Elesterio (to witness)

Q: After he threatened you, what happened?
A: He told me not to tell what had happened.

Court (to witness)

Q: What did the accused do to you?
A: He wrestled me.

Q: After he wrestled you what happened to you?
A: He let me to lie down.

Q: When you were lying down what did the accused do to you?
A: He raped me.

Q: What do you mean that you were raped?
A: Witness did not answer.

Fiscal Elesterio (to witness)

Q: When you said you were raped, are you saying that the accused inserted his penis to your vagina?
A: Yes, sir.

Court (to witness)

Q: Were you wearing panty at that time?
A: Yes, sir.

Q: What did the accused do to your panty?
A: He removed my underwear.

Q: Than after your panty was removed by the accused he inserted his penis into your vagina. Is that correct?
A: Yes, sir.

Court Proceed.

Fiscal Elesterio (to witness)

Q: Did you resist to the accused advances?
A: Yes, Sir.

Q: Please tell us what did you do in fighting back the accused?
A: I cried.

Q: Madam witness after you were raped, according to you, you were raped what did you do if any?
A: Nothing.

Court (to witness)

Q: You tell the Court that the accused inserted his penis into your vagina, [w]as the accused able to insert his penis into your vagina?
A: Yes, sir.[13]

For a charge of rape under Article 266-A of the Revised Penal Code (RPC) to prosper, the prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented.[14]

The prosecution in the present case positively established the elements of rape required under Article 266-A of the RPC.

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[13] TSN, 10 January 2006, pp. 4-8.

[14] *People v. Dalan*, 736 Phil. 298, 300 (2014).

First, the appellant had carnal knowledge of the victim. AAA was positive and categorical in asserting that appellant inserted his penis into her vagina. Her testimony was corroborated by the medical evaluation which is suggestive of sexual abuse. Second, appellant employed threat and force. He used a long blade to threaten AAA to submit to his desire.

In addition, the appellant did not impute any improper motive to AAA or on any other prosecution witnesses on why they would falsely testify against him. The failure of AAA to shout for help and her delay in reporting the rape incident do not negate rape. We have consistently ruled that failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent.[15] Moreover, delay in reporting rape incidents, in the face of threats of phy*sic*al violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant.[16]

At the time of the rape incident, AAA was only 14 years old. However, the qualifying circumstance of relationship was not proven. Thus, appellant was correctly convicted of the crime of simple rape. Both courts correctly imposed the penalty of *reclusion perpetua*.

The awards of civil indemnity, moral damages and exemplary damages must be increased to ₱75,000.00 each in line with prevailing jurisprudence.[17] Interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Resolution until fully paid.

**WHEREFORE**, the assailed 25 July 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01011 finding appellant

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[15] *People v. Pacheco*, 632 Phil. 624, 633 (2010) citing *People v. Ofemiano*, 625 Phil. 92, 99 (2010).

[16] *People v. Cabiles*, 616 Phil. 701, 707-708 (2009).

[17] *People v. Jugueta,* G.R. No. 202124, 5 April 2016.

Jonathan Arcillo guilty beyond reasonable doubt of the crime of rape is **AFFIRMED with MODIFICATIONS**; the awards of civil indemnity, moral damages and exemplary damages are increased to ₱75,000.00 each; in addition all monetary awards shall earn interest at the rate of six percent (6%) *per annum* from date of finality of this Resolution until fully paid.

**SO ORDERED.**

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

*Reyes, J.,* on wellness leave.

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**SECOND DIVISION**

[G.R. No. 213529. July 13, 2016]

**JANET LIM NAPOLES,** *petitioner, vs.* **HON. SECRETARY LEILA DE LIMA, PROSECUTOR GENERAL CLARO ARELLANO, and SENIOR DEPUTY STATE PROSECUTOR THEODORE M. VILLANUEVA, in their capacities as Officers of the Department of Justice, HON. ELMO M. ALAMEDA, in his capacity as Presiding Judge of the Regional Trial Court of Makati, Branch 150, NATIONAL BUREAU OF INVESTIGATION (NBI), ARTURO F. LUY, GERTRUDES K. LUY, ANNABELLE LUY-REARIO, and BENHUR K. LUY,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; THE FILING OF THE INFORMATION BEFORE THE**

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[*] Additional Member per Raffle dated 13 June 2016.

**TRIAL COURT MOOTS DETERMINATION OF PROBABLE CAUSE.—** Even before the filing of this Petition questioning the Review Resolution, an Information for serious illegal detention has been filed against Napoles. Therefore, with the filing of the Information before the trial court, this Petition has become moot and academic. The trial court has then acquired *exclusive* jurisdiction over the case, and the determination of the accused's guilt or innocence rests within the sole and sound discretion of the trial court. As explained in *Crespo v. Mogul*: x x x The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court he cannot impose his opinion on the trial court. The court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence[.]

2. **ID.; ID.; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE IN FILING AN INFORMATION IN COURT IS AN EXECUTIVE FUNCTION WHILE THAT FOR ISSUANCE OF AN ARREST WARRANT, THE DETERMINATION OF PROBABLE CAUSE IS A JUDICIAL FUNCTION.—** During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers. On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]" This requirement of personal evaluation by

the judge is reaffirmed in Rule 112, Section 5(a) of the Rules on Criminal Procedure.

3. **ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; NO GRAVE ABUSE OF DISCRETION IN FILING THE INFORMATION AFTER FINDING PROBABLE CAUSE, AND IN ISSUING THE REVIEW RESOLUTION, REVERSING THE INITIAL FINDING OF LACK OF PROBABLE CAUSE.—** There was no grave abuse of discretion in the filing of Information against Napoles. The Review Resolution sufficiently explained that during the preliminary investigation stage, there was probable cause to believe that Napoles and Lim, her brother, illegally deprived Benhur Luy of his liberty: x x x It is true that the Review Resolution reversed the initial finding of lack of probable cause against Napoles and Lim. However, this in itself does not show grave abuse of discretion. The very purpose of a motion for reconsideration is to give the prosecutor a chance to correct any errors that he or she may have committed in issuing the resolution ordering the filing of an information in court or dismissing the complaint. "Reception of new evidence is not within the office of a Motion for Reconsideration." A reversal may result if a piece of evidence that might have yielded a different resolution was inadvertently overlooked.

4. **ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION IN THE ISSUANCE OF WARRANT OF ARREST WHERE THE JUDGE PERSONALLY EVALUATED THE EVIDENCE AND DECIDED ON THE EXISTENCE OF PROBABLE CAUSE.—** Neither was there abuse of discretion in the issuance of the arrest warrant against Napoles. That Judge Alameda issued the arrest warrant within the day he received the records of the case from the prosecutor does not mean that the warrant was hastily issued. "Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste." Judge Alameda was under no obligation to review the entire case record as Napoles insists. All that is required is that a judge personally evaluates the evidence and decides, independent of the finding of the prosecutor, that probable cause exists so as to justify the issuance of an arrest warrant. x x x Moreover, Judge Alameda did not gravely abuse his discretion in issuing the arrest warrant

despite the pendency of the Motions for Judicial Determination of Probable Cause filed by Napoles and Lim. x x x We afford respondents the presumption of regularity in the performance of their duties. Napoles failed to show capriciousness, whimsicality, arbitrariness, or any despotic exercise of judgment by reason of passion and hostility on the part of respondents.

**APPEARANCES OF COUNSEL**

*David Cui-David Buenaventura & Ang Law Offices* for petitioner.

*Office of the Solicitor General* for public respondents.

**D E C I S I O N**

**LEONEN, *J.*:**

A decision convicting an accused moots any proceeding that questions the determination of probable cause, either in the filing of the information in court or in the issuance of the warrant of arrest. Guilt beyond reasonable doubt had then been established, and questioning whether a lower quantum of proof exists, i.e., probable cause, would be pointless.

This resolves the Petition for Review on Certiorari with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction[1] filed by petitioner Janet Lim Napoles (Napoles). She assails the Court of Appeals Decision[2] dated March 26, 2014 and Resolution[3] dated July 8, 2014, which found no grave abuse of discretion in the filing of an information for serious illegal detention against her and the subsequent issuance of a warrant for her arrest.

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[1] *Rollo*, pp. 11-57.

[2] *Id*. at 58-80. The Decision was penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Rebecca De Guia-Salvador and Vicente S. E. Veloso of the Special Third Division, Court of Appeals, Manila.

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

This case stems from a Joint Sworn Statement[4] executed by Arturo Francisco Luy, Gertrudes Luy, Arthur Luy, and Annabelle Luy on March 8, 2013. They alleged that a family member, Benhur Luy, had been detained against his will since December 19, 2012, transferred from place to place in a bid to cover up the JLN Group of Companies' anomalous transactions involving the Priority Development Assistance Fund.[5] Napoles, owner of the JLN Group of Companies, and her brother, Reynald Lim (Lim), allegedly masterminded the "pork barrel scam" and the detention of Benhur Luy.[6]

Acting on the Joint Sworn Statement, Secretary of Justice Leila M. De Lima (Secretary De Lima) directed the National Bureau of Investigation Special Task Force to investigate the matter.[7] This led to a "rescue operation"[8] on March 22, 2013 to release Benhur Luy who, at that time, was reportedly detained in a condominium unit at Pacific Plaza Tower, Bonifacio Global City.[9] Lim, who was with Benhur Luy at the condominium unit, was arrested by operatives of the National Bureau of Investigation.[10]

In the March 23, 2013 Recommendation[11] addressed to Prosecutor General Claro A. Arellano (Prosecutor General Arellano), National Bureau of Investigation Director Nonnatus Caesar R. Rojas (Director Rojas) requested the prosecution of Lim and Napoles for serious illegal detention.

In their respective Counter-Affidavits, Lim[12] and Napoles[13] denied illegally detaining Benhur Luy. Both claimed that Benhur

[4] *Id*. at 336-346.

[5] *Id*. at 342-345.

[6] *Id*.

[7] *Id*. at 370, Recommendation dated March 23, 2013.

[8] *Id*. at 371.

[9] *Id*.

[10] *Id*. at 373-375, Joint Affidavit of Arrest.

[11] *Id*. at 369-372.

[12] *Id*. at 105-132.

[13] *Id*. at 290-313.

Luy loaned ₱5,000,000.00 from Air Materiel Wing Savings and Loan Association, Inc. under the name of Napoles.[14] The loan, allegedly unauthorized, angered Napoles.[15] To obtain Napoles' forgiveness, Benhur Luy voluntarily went on a three-month spiritual retreat at Bahay ni San Jose in Magallanes Village, Makati City beginning December 19, 2012.[16]

Finding no probable cause against Lim and Napoles, Assistant State Prosecutor Juan Pedro V. Navera (Prosecutor Navera) recommended the dismissal of the complaint for serious illegal detention in the Resolution[17] dated June 10, 2013. Prosecutor Navera believed that Benhur Luy voluntarily stayed at Bahay ni San Jose for a spiritual retreat, as attested to by Monsignor Josefino Ramirez and the five (5) Chinese priests residing in the retreat house.[18]

As to the claim that Benhur Luy was detained to cover up the alleged anomalous transactions of the JLN Group of Companies involving the Priority Development Assistant Fund, Prosecutor Navera said that the claim was "too speculative and not sufficiently established."[19] He added that he did not "dwell too much on . . . [the] alleged diversion of government funds"[20] because the case is for serious illegal detention, not for corruption or financial fraud.

Prosecutor Navera's recommendation was initially approved by Prosecutor General Arellano.[21]

However, in the Review Resolution[22] dated August 6, 2013, Senior Deputy State Prosecutor and Chair of the Task Force on

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[14] *Id*. at 107 and 293.

[15] *Id*.

[16] *Id*. at 110-111.

[17] *Id*. at 160-198.

[18] *Id*. at 191.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 197.

[22] *Id*. at 87-104.

Anti-Kidnapping Theodore M. Villanueva (Prosecutor Villanueva) reversed the June 10, 2013 Resolution and recommended filing an information for serious illegal detention against Lim and Napoles.[23]

According to Prosecutor Villanueva, the alleged diversion of government funds to the JLN Group of Company's dummy foundations was necessary to "establish the alleged motive of [Napoles and Lim] in detaining . . . Benhur Luy against his will."[24] Moreover, there was probable cause to believe that Benhur Luy was deprived of his liberty, given the allegations in his Sinumpaang Salaysay.[25]

The Review Resolution was approved by Prosecutor General Arellano,[26] and an Information[27] for serious illegal detention was filed before the Regional Trial Court of Makati against Napoles and Lim. The accusatory portion of the Information reads:

That from the period of 19 December 2012 up to 22 March 2013, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, who are private individuals, conspiring, confederating and mutually aiding one another, without authority of law and by means of intimidation, did, then and there, willfully, unlawfully and feloniously deprive Benhur Luy y Kilapkilap of his liberty, prohibiting him from leaving Bahay San Jose, located at No. 52 Lapulapu Street, Magallanes Village, Makati City, nor contacting any of his relatives without their prior permission, thereby depriving him of his liberty during the aforesaid period of time, which lasted for more than three (3) days, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[28]

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[23] *Id*. at 102.

[24] *Id*. at 88.

[25] *Id*. at 376-378.

[26] *Id*. at 102.

[27] *Id*. at 757-758.

[28] *Id*. at 757.

The case was raffled to Branch 150 presided by Judge Elmo M. Alameda (Judge Alameda).[29] Recommending no bail for Napoles and Lim, Judge Alameda issued a warrant for their arrest.[30]

Napoles filed before the Court of Appeals a Petition for Certiorari[31] alleging grave abuse of discretion on the part of Secretary De Lima, Prosecutor General Arellano, Prosecutor Villanueva, Director Rojas, and of Judge Alameda.[32] She contended that there was no probable cause to charge her with serious illegal detention, and that Judge Alameda erred in issuing the arrest warrant despite the pendency of her Motion for Judicial Determination of Probable Cause.[33]

In deciding Napoles' Petition for Certiorari, the Court of Appeals said that "full discretionary authority in the determination of probable cause during a preliminary investigation has been delegated to the executive branch, particularly at the first instance to the public prosecutor, and ultimately to the [Department of Justice]."[34] Hence, absent any grave abuse of discretion, courts will not disturb the public prosecutor's finding of probable cause.[35]

The Court of Appeals observed that the Review Resolution "show[ed] the reasons for the course of action [the prosecution] had taken which were thoroughly and sufficiently discussed therein."[36] Moreover, the prosecution "painstakingly went over the pieces of evidence adduced by the parties and thereafter resolved the issues by applying the precepts of the law on evidence."[37]

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[29] *Id*. at 86, Order of Arrest dated August 14, 2013.

[30] *Id*.

[31] *Id*. at 759-819.

[32] *Id*. at 801.

[33] *Id*. at 803.

[34] *Id*. at 74.

[35] *Id*.

[36] *Id*. at 75.

[37] *Id*.

With respect to the issuance of the arrest warrant, the Court of Appeals noted Napoles' "attempt to quash the warrant of arrest issued against her by way of . . . petition for certiorari."[38] Moreover, since Napoles failed to attach copies of the arrest warrant in her Petition for Certiorari, the Court of Appeals refused to squarely rule on the issue of whether there was grave abuse of discretion in its issuance.[39]

Finding no grave abuse of discretion in the filing of the information in court and the issuance of the arrest warrant, the Court of Appeals dismissed Napoles' Petition for Certiorari in its March 26, 2014 Decision.[40]

Napoles moved for reconsideration,[41] but the Court of Appeals denied the Motion in its July 8, 2014 Resolution.[42]

On September 11, 2014, Napoles filed before this Court her Petition for Review on Certiorari with Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction.[43] Respondents Secretary De Lima, Prosecutor General Arellano, Prosecutor Villanueva, Director Rojas, and Judge Alameda, through the Office of the Solicitor General, filed a Comment,[44] to which Napoles filed a Reply.[45]

In her Petition for Review on Certiorari, Napoles maintains that respondents whimsically and arbitrarily found probable cause against her.[46] She emphasizes that, without introduction of additional evidence, the Department of Justice reversed its

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[38] *Id*. at 79.

[39] *Id*.

[40] *Id*. at 58-80.

[41] *Id*. at 607-626.

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

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

[44] *Id*. at 639-687.

[45] *Id*. at 880-889.

[46] *Id*. at 30.

initial Resolution dismissing the complaint for serious illegal detention.[47] In Napoles' view, the Review Resolution was issued not because Benhur Luy was illegally detained but because the government "need[ed] to get hold of [her] in connection with the allegations of Benhur Luy on the misuse of [the Priority Development Assistance Fund] by legislators[.]"[48]

Napoles adds that under Rule 112, Section 6[49] of the 2000 Revised Rules of Criminal Procedure, Judge Alameda had 10 days from the filing of the information to personally evaluate the prosecutor's Resolution and its supporting evidence. Yet, Judge Alameda issued the arrest warrant the very day the records of the case were transmitted to Branch 150.[50] This allegedly showed the hastiness with which Judge Alameda issued the warrant for her arrest. Judge Alameda allegedly "succumbed to the extraneous pressure and influence from the mass and social media to appease the growing public clamor of crucifying [Napoles] for her alleged involvement in the [pork barrel] scam."[51]

In their Comment, respondents point out how Napoles failed to exhaust administrative remedies by failing to file a petition

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[47] *Id*. at 29.

[48] *Id*.

[49] Rules of Court, Rule 112, Sec. 6(a) provides:

Section 6. *When warrant of arrest may issue*. — (a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information.

[50] *Id*. at 32.

[51] *Id*. at 31.

for review before the Secretary of Justice.[52] The present Petition is also dismissible, respondents claim, because Napoles failed to implead an indispensable party: the People of the Philippines.[53]

Respondents echo the Court of Appeals' pronouncement and argue that the determination of probable cause for filing an information in court is an executive function.[54] Absent grave abuse of discretion, as in this case, courts of justice may not interfere with that finding.[55]

Neither was Judge Alameda's issuance of the arrest warrant attended with grave abuse of discretion, according to respondents. For them, "what is essential is . . . that [Judge Alameda] was able to review the [prosecutor's finding] and, on the basis thereof, affirm[ed] the prosecutor's determination of probable cause."[56]

The issue for our resolution is whether the Court of Appeals erred in finding no grave abuse of discretion: first, in filing an information for serious illegal detention against Napoles; and, second, in the issuance of a warrant for her arrest.

This Petition must be denied for being moot and academic. In any case, the Court of Appeals did not err in dismissing the Petition for Certiorari. There was no grave abuse of discretion either in the filing of information in court or in the issuance of the arrest warrant against Napoles.

**I**

Even before the filing of this Petition questioning the Review Resolution, an Information for serious illegal detention has been filed against Napoles. Therefore, with the filing of the Information before the trial court, this Petition has become moot and

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[52] *Id*. at 647-653.

[53] *Id*. at 653-656.

[54] *Id*. at 669-671.

[55] *Id*. at 670.

[56] *Id*. at 676.

academic.[57] The trial court has then acquired *exclusive* jurisdiction over the case, and the determination of the accused's guilt or innocence rests within the sole and sound discretion of the trial court. As explained in *Crespo v. Mogul*:[58]

The filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.

The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for appropriate action. While it is true that the fiscal has the *quasi-judicial* discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court. The only qualification is that the action of the Court must not impair the substantial rights of the accused. [sic] or the right of the People to due process of law.

. . . . . . . . .

The rule therefore in this jurisdiction is that once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case

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[57] See *Secretary De Lima v. Reyes*, G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per *J.* Leonen, Second Division].

[58] 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

is already in Court he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before it. The determination of the case is within its exclusive jurisdiction and competence[.][59] (Citations omitted)

It is true that the Constitution allows the exercise of the power of judicial review in cases where grave abuse of discretion exists.[60] In this case, however, a petition for certiorari before this Court was not the "plain, speedy, and adequate remedy in the ordinary course of law"[61] because, as discussed, the trial court already acquired jurisdiction over the case. The proper remedy for Napoles was to proceed to trial and allow the exhaustive presentation of evidence by the parties.

During the pendency of this Petition, the main case from which the Petition for Certiorari stemmed was decided by the trial court. In its April 14, 2015 Decision,[62] Branch 150 of the Regional

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[59] *Id*. at 474-476.

[60] CONST., Art. VIII, Sec. 1 provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.
Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[61] RULES OF COURT, Rule 65, Sec. 1 provides:

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.

[62] *Rollo*, pp. 899-924.

Trial Court of Makati City found Napoles guilty beyond reasonable doubt of serious illegal detention, punished under Article 267[63] of the Revised Penal Code. She was sentenced to suffer the penalty of *reclusion perpetua* and was ordered to pay Benhur Luy ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[64]

All the more should this Petition be dismissed. Napoles has been found guilty of serious illegal detention with proof beyond reasonable doubt, a quantum of evidence higher than probable cause.[65] Resolving whether there was probable cause in the filing of information before the trial court and in the issuance of an arrest warrant would be "of no practical use and value."[66]

In any case, despite the mootness of this Petition, we proceed with resolving the issues presented by the parties for the guidance of the bench and the bar.[67]

**II**

Resolving this Petition requires an examination of the concept of probable cause. During preliminary investigation, the prosecutor determines the existence of probable cause for filing

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[63] REV. PEN. CODE, Art. 267 provides:

Art. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer[.]

[64] *Rollo,* p. 924, Regional Trial Court Decision.

[65] *Leviste v. Hon. Alameda*, 640 Phil. 620, 630 (2010) [Per *J.* Carpio Morales, Third Division].

[66] *Id*. at 633.

[67] *Id*.

an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial."[68] At this stage, the determination of probable cause is an executive function.[69] Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.[70]

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function.[71] No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]"[72] This requirement of personal evaluation by the

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68 RULES OF COURT, Rule 112, Sec. 1 provides:

SECTION 1. *Preliminary investigation defined*; *when required*. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial[.]

69 *People v. Castillo and Mejia*, 607 Phil. 754, 764 (2009) [Per *J.* Quisumbing, Second Division].

70 *Alberto v. Court of Appeals*, 711 Phil. 530, 550 (2013) [Per *J.* Perlas-Bernabe, Second Division].

71 *People v. Castillo and Mejia*, 607 Phil. 754, 765 (2009) [Per *J.* Quisumbing, Second Division].

72 CONST., Art. III, Sec. 2 provides:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

judge is reaffirmed in Rule 112, Section 5(a) of the Rules on Criminal Procedure:[73]

SEC. 5. *When warrant of arrest may issue.* —

(a) *By the Regional Trial Court*. — Within ten (10) days from the filing of the complaint or information, *the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence*. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to Section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis supplied)

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires jurisdiction and "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."[74]

**II. A.**

There was no grave abuse of discretion in the filing of Information against Napoles. The Review Resolution sufficiently explained that during the preliminary investigation stage, there was probable cause to believe that Napoles and Lim, her brother, illegally deprived Benhur Luy of his liberty:

[T]he undersigned hereby rules that there is probable cause that respondents committed the crime of Serious Illegal Detention and should be held for trial. Relative thereto, it should be noted that the crime of Serious Illegal Detention has the following elements:

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[73] As amended by A.M. No. 05-8-26-SC (2005).

[74] *Crespo v. Mogul*, 235 Phil. 465, 476 (1987) [Per *J.* Gancayco, *En Banc*].

(1) the offender is a private individual;

(2) he kidnaps or detains another or in any other manner deprives the latter of his liberty;

(3) the act of detention or kidnapping is illegal; and

(4) in the commission of the offense, any of the following circumstances are present: (a) the kidnapping or detention lasts more than 3 days; or (b) it is committed by simulating public authority; or (c) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (d) the person kidnapped or detained is a minor, female, or a public officer.

. . . . . . . . .

Relative to the instant case, there is no question regarding the *first element*, as both respondents are private individuals. There is no allegation to the contrary that respondents [Reynald] Lim and Janet Lim Napoles are private indiv[i]duals.

The issue in this case actually revolves around the *second element* of the crime, which is the question of whether complainant Benhur Luy was actually deprived of his liberty. . . .

. . . . . . . . .

[I]t appears that there is sufficient evidence to establish that complainant Benhur Luy was actually deprived of his liberty.

*First of all*, it is an undisputed fact that complainant Benhur Luy executed an affidavit which detailed the deprivation of his liberty. His elaboration of the deprivation of his liberty should be given weight vis-a-vis the allegations of respondents. . . .

. . . . . . . . .

*Second*, the undersigned also finds the claim that complainant Benhur Luy went on a "spiritual retreat" at Bahay San Jose as contrary to human nature (to say the least). The records would show that respondent Janet Lim Napoles was extremely mad at complainant Benhur Luy for obtaining unauthorized loans in her behalf. With the anger of respondent Janet Lim Napoles, the undersigned finds it difficult to believe that complainant Benhur Luy would choose to have a spiritual retreat with priests that are closely associated with respondent Janet Lim Napoles. Why would

complainant Benhur Luy choose to stay in an establishment that has close ties with respondent Janet Lim Napoles if the latter was already hell bent on filing a criminal case against him?

. . . . . . . . .

*Sixth*, an examination of the facts and circumstances of the instant case leads us to conclude that respondents had motive to deprive complainant Benhur Luy of his liberty. Respondent Janet Lim Napoles averred that she discovered that complainant Benhur Luy illegally obtained two (2) loans in her behalf. This, in turn, angered respondent Janet Lim Napoles, and the latter even threatened to file a criminal case against him.

However, complainant Benhur Luy's alleged knowledge of the anomalous transactions of JLN Group of Companies would place respondent Janet Lim Napoles in a compromising position. If complainant Benhur Luy is sued, then the latter would not have any choice but to reveal his knowledge on the involvement of JLN in the PDAF, Malampaya and the Fertilizer scams. To avoid this, respondents restrained his liberty, thereupon forcing complainant Benhur Luy's silence.

Obviously, fishing into the motives of the perpetrators of this crime is an ardent task. However, the undersigned finds that the above-captioned proposition makes more sense than the one proferred by respondents. While the undersigned does not deny that there is evidence that complainant Benhur Luy committed the crime of qualified theft, their defense that he went on a spiritual retreat, [i]n a house with close ties with respondent Janet Lim Napoles, is simply unfathomable to believe.

Moreover, even if the alleged knowledge of complainant Benhur Luy on the anomalies involving JLN group of companies is disregarded, it is still logical to conclude that the qualified theft committed by the latter created a motive on the part of respondents to detain him.

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With regard to the *third element*, and considering our above conclusion, it is crystal clear that the act of depriving Benhur Luy's liberty is illegal. Both respondents had no authority and/or justifiable reason to detain and deprive complainant Benhur Luy of his liberty.

As to the *fourth element*, it is undisputed that complainant Benhur Luy was deprived of his liberty for more than three (3) days. In fact,

it lasted for months starting December 2012 up to March 2013, when complainant Benhur Luy was rescued by the NBI.

Lastly, with regard to the participation of respondent Janet Lim Napoles, it is evident that she was greatly involved in the deprivation of liberty of complainant Benhur Luy. The statements made by Merlita Suñas and Maria Flor Villanueva clearly manifest respondent Janet Lim Napoles' knowledge of the crime.

Moreover, Benhur Luy's detention at Bahay San Jose, which has close ties with respondent Janet Lim Napoles, is indicative that she had personal knowledge of what was happening. As earlier ruled, it would be highly illogical for Benhur Luy to have his retreat in a house that has very close ties to Janet Napoles. In our mind, complainant Benhur Luy's confinement at Bahay San Jose was caused by respondent Janet Lim Napoles.

. . . . . . . . .

The most damning link between the crime and respondent Janet Lim Napoles is the motive behind complainant Benhur Luy's deprivation of liberty. Consistent with our earlier finding that the deprivation was undertaken in order to prevent complainant Benhur Luy from divulging information on JLN group of companies' involvement in the Fertilizer Fund, Malampaya and PDAF scams, it is clear that respondent Janet Lim Napoles authored and/or orchestrated this unlawful three (3) month detention.[75] (Citations omitted)

It is true that the Review Resolution reversed the initial finding of lack of probable cause against Napoles and Lim. However, this in itself does not show grave abuse of discretion.

The very purpose of a motion for reconsideration is to give the prosecutor a chance to correct any errors that he or she may have committed in issuing the resolution ordering the filing of an information in court or dismissing the complaint. "Reception of new evidence is not within the office of a Motion for Reconsideration."[76] A reversal may result if a piece of evidence

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[75] *Rollo,* pp. 90-100.

[76] *Ferrer v. Carganillo*, 634 Phil. 557, 590 (2010) [Per *J.* Del Castillo, Second Division].

that might have yielded a different resolution was inadvertently overlooked.

In initially dismissing the criminal complaint filed by Benhur Luy's family, the prosecutor disregarded the purported *motive* behind Benhur Luy's detention. According to the initial Resolution, whether Napoles and Lim detained Benhur Luy to prevent him from exposing the anomalous transactions of the JLN Group of Companies involving the Priority Development Assistance Fund would spawn an entirely different proceeding; hence, the issue is irrelevant in the proceedings involving the serious illegal detention charge.[77]

Although motive is not an element of a crime, it is a "prospectant circumstantial evidence"[78] that may help establish intent. In this case, the Review Resolution sufficiently explained why it was "contrary to human nature"[79] for Benhur Luy to go on a three (3)-month spiritual retreat with priests that have close ties with Napoles; and, instead, Benhur Luy had been detained at Bahay ni San Jose, transferred from place to place until he was rescued in Pacific Plaza because he knew first-hand of Napoles' involvement in the pork barrel scam.

**II. B.**

Neither was there grave abuse of discretion in the issuance of the arrest warrant against Napoles. That Judge Alameda issued the arrest warrant within the day he received the records of the case from the prosecutor does not mean that the warrant was hastily issued. "Speed in the conduct of proceedings by a judicial or quasi-judicial officer cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste."[80]

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[77] *Rollo,* p. 191, Resolution of the prosecutor.

[78] See *People v. Madrigal-Gonzales,* 117 Phil. 956, 963 (1963) [Per *J.* Paredes, *En Banc*].

[79] *Rollo,* p. 94.

[80] *Santos-Concio v. Department of Justice,* 567 Phil. 70, 89 (2008) [Per *J.* Carpio Morales, Second Division].

Judge Alameda was under no obligation to review the entire case record as Napoles insists. All that is required is that a judge personally evaluates the evidence and decides, independent of the finding of the prosecutor, that probable cause exists so as to justify the issuance of an arrest warrant. As explained in *Ho v. People*:[81]

[I]t is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. *What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause*.[82] (Emphasis supplied)

In his August 14, 2013 Order,[83] Judge Alameda declared that he personally evaluated the records of the case, including the Review Resolution and the Sworn Statements of the witnesses; and that based on the records, he found probable cause to issue an arrest warrant against Napoles:

After personally evaluating the Review Resolution issued by Senior Deputy State Prosecutor Theodore M. Villanueva, Chairman-Task Force on Anti-Kidnapping and approved by Prosecutor General Claro A. Arellano, together with the Sworn Statements of the complainants and other evidence on record, the undersigned finds the Review Resolution to have factual and legal basis. Likewise, the undersigned after personally reviewing the finding of Senior Deputy State Prosecutor Theodore M. Villanueva based on the evidence on record, finds probable cause for the issuance of Warrant of Arrest against the accused for the crime of Serious Illegal Detention under Article 267 of the Revised Penal Code there being probable cause to believe

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[81] 345 Phil. 597 (1997) [Per *J*. Panganiban, *En Banc*].

[82] *Id*. at 612.

[83] *Rollo,* pp. 83-85.

that the crime of Serious Illegal Detention has been committed by the accused.[84]

We find this declaration sufficient compliance with the constitutional requirement of personal evaluation.

Moreover, Judge Alameda did not gravely abuse his discretion in issuing the arrest warrant despite the pendency of the Motions for Judicial Determination of Probable Cause filed by Napoles and Lim. Hearing these Motions would be a

mere superfluity, for with or without such motion[s], the judge is duty-bound to personally evaluate the resolution of the public prosecutor and the supporting evidence. In fact, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.[85]

We afford respondents the presumption of regularity in the performance of their duties.[86] Napoles failed to show capriciousness, whimsicality, arbitrariness, or any despotic exercise of judgment by reason of passion and hostility on the part of respondents.

**WHEREFORE,** the Petition for Review on Certiorari is **DENIED**.

**SO ORDERED.**

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

*Mendoza, J.,* on official leave.

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[84] *Id*. at 84.

[85] *Leviste v. Alameda*, 640 Phil. 620, 648-649 (2010) [Per *J*. Carpio Morales, Third Division].

[86] RULES OF COURT, Rule 131, Sec. 3 provides:

Section 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . . . . . . .

(m) That official duty has been regularly performed[.]

See *Santos-Concio v. Department of Justice,* 567 Phil. 70, 89 (2008) [Per *J*. Carpio Morales, Second Division].

**SECOND DIVISION**

[G.R. No. 215340. July 13, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **GLORIA CAIZ *y* TALVO,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** The elements of violation of Section 5 of Republic Act No. 9165 are: (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. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti.* The prosecution must also establish the integrity of the dangerous drug, being the corpus delicti of the case.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED BY PROSECUTION.—** *People v. Kamad* summarized the links in the chain of custody that must be established by the prosecution: *[F]irst*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

3. **ID.; ID.; ID.; MARKING OF THE ILLEGAL DRUG SEIZED; FAILURE TO ESTABLISH WITH CERTAINTY WHERE THE SEIZED SACHETS WERE MARKED AFFECTED THEIR INTEGRITY AS *CORPUS DELICTI.*—** Although it may be true that the place of marking is not an essential element, the failure to establish with certainty where the seized sachets were marked affects the integrity of the chain of custody of the corpus delicti. *People v. Dahil* has discussed the purpose and importance of marking evidence: Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings

as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, this, preventing switching, planting or contamination of evidence.

4. **ID.; ID.; BUY-BUST OPERATION; NOT INVALIDATED BY NON-COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA).—** The alleged non-coordination of the police officers with the Philippine Drug Enforcement Agency did not render the buy-bust operation invalid. *People v. Rebotazo* has discussed that Section 86 of Republic Act No. 9165 does not state any consequence in case a buy-bust operation is not coordinated with the Philippine Drug Enforcement Agency, x x x. This Court has ruled in other cases that nothing in Section 86 states that non-coordination with the PDEA renders the buy-bust operation invalid.

5. **ID.; ID.; CHAIN OF CUSTODY RULE; STRICTER COMPLIANCE WITH THE RULE WHEN THE AMOUNT OF DANGEROUS DRUG IS MINUTE.—** [While] *Mallillin v. People* emphasizes why proof of the chain of custody in dangerous drugs cases must be strictly complied with x x x. The law recognizes that there may be instances when exact compliance with the required procedure is not observed. x x x Here, the prosecution does not offer any explanation why there were several procedural lapses. The prosecution's argument that there is a presumption that "official duty has been regularly performed" will not suffice. x x x *People v. Garry dela Cruz* acquitted the accused as the prosecution failed to establish the corpus delicti due to non-compliance with the rule on the chain of custody: Non-compliance is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused. Courts are reminded to exercise a higher level of scrutiny when deciding cases involving miniscule amounts of dangerous drugs. There should be stricter compliance with the rule on the chain of custody when the amount of the dangerous drug is minute due to the possibility that the seized item was tampered.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## D E C I S I O N

**LEONEN, *J*.:**

Failure to prove the preservation of the integrity of the corpus delicti in dangerous drugs cases will lead to the acquittal of the accused on the ground of reasonable doubt.

Two Informations were filed against accused-appellant Gloria Caiz y Talvo (Caiz) for violation of Sections 5 and 11 of Republic Act No. 9165.[1]

The accusatory portion of the Information for violation of Section 5 of Republic Act No. 9165 states:

> That on or about 11:00 o'clock in the morning of February 20, 2008 at Zone 1, Brgy. Pinmaludpod, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one (1) heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride (SHABU) weighing 0.05 gram, a dangerous drug.
>
> CONTRARY to Sec. 5, Art. II of Republic Act 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."[2]

The accusatory portion of the Information for violation of Section 11 of Republic Act No. 9165 states:

> That on or about 11:00 o'clock in the morning of February 20, 2008 at Zone 1, Brgy. Pinmaludpod, Urdaneta City, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in her possession, control and custody two (2) heat sealed

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[1] Comprehensive Dangerous Drugs Act of 2002 (2002).

[2] *Rollo,* p. 5, Court of Appeals Decision.

transparent plastic sachet containing methamphetamine hydrochloride (SHABU) weighing 0.05 gram and 0.04 gram, with a total weight of 0.09 gram.

CONTRARY to Art. II, Sec. 11 of Republic Act 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."[3]

During the trial, Police Officer I Nesely Valle (PO1 Valle), Senior Police Officer I Ronald Patricio (SPO1 Patricio), and Police Officer III Michael Datuin (PO3 Datuin) were presented as witnesses.[4] They testified on the events "before, during[,] and after the buy-bust operation[.]"[5] Police Officer II Jeffrey Tajon (PO2 Tajon) of the Philippine National Police Crime Laboratory testified that he "received the request for laboratory examination at around 5:00 o'clock in the afternoon of February 20, 2008."[6]

PO1 Valle testified that on February 20, 2008, at around 7:00 a.m., an informant reported to the Special Operations Group of the Philippine National Police in Lingayen about the rampant sale of methamphetamine hydrochloride (shabu) in Barangay Pinmaludpod, Urdaneta City.[7]

A buy-bust operation team was immediately organized by the Special Operations Group. SPO1 Patricio and PO1 Valle were the poseur buyers, while Senior Police Officer II Meginio Garcia (SPO2 Garcia) prepared the marked money.[8]

The Philippine National Police coordinated with the Urdaneta City Police Community Precinct at Barangay Pinmaludpod for the conduct of the buy-bust operation.[9] The buy-bust operation was scheduled on the same day, February 20, 2008.[10]

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[3] *Id*.

[4] *Id*.

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

[6] *Id*. at 6.

[7] CA *rollo*, p. 67, Brief for plaintiff-appellee.

[8] *Rollo,* p. 3.

[9] *Id*.

[10] CA *rollo*, p. 51, Regional Trial Court Decision.

On February 20, 2008, the buy-bust team conducted a verification surveillance in Barangay Pinmaludpod and were able to observe Caiz's activities.[11]

After the verification surveillance, SPO1 Patricio, PO1 Valle, and the confidential informant went to Caiz's house at around 11:00 a.m. to conduct the buy-bust operation.[12] The informant introduced SPO1 Patricio and PO1 Valle to Caiz. As poseur buyers, SPO1 Patricio and PO1 Valle told Caiz that they would like to purchase ₱600.00 worth of shabu.[13] The marked money used consisted of one (1) ₱500.00 bill and one (1) ₱100.00 bill.[14] These bills were marked before the buy-bust operation.[15] The marking used was "RDP,"[16] the initials of SPO1 Patricio.[17]

After Caiz received the marked money, she handed a "small transparent plastic sachet containing white crystalline substance"[18] to SPO1 Patricio. SPO1 Patricio then removed his bonnet, which was the pre-arranged signal of the operation. SPO1 Patricio and PO1 Valle identified themselves to Caiz as police officers and proceeded to arrest her.[19]

Caiz was informed of her constitutional rights.[20] PO1 Valle frisked her right after she was arrested[21] and recovered the marked money and "two (2) more plastic sachets containing shabu from . . . [Caiz's] pocket."[22] Caiz was then brought to the Philippine

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[11] *Id.* at 51-52.

[12] *Rollo*, p. 4.

[13] *Id.*

[14] CA *rollo*, p. 51.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Rollo*, p. 4.

[19] *Id.*

[20] CA *rollo*, p. 52.

[21] *Id.*

[22] *Rollo*, p. 4.

National Police office in Lingayen[23] for interrogation and documentation.[24]

The items recovered from Caiz "were turned over by PO1 Valle to SPO1 Patricio for marking purposes[.]"[25]

The plastic sachet sold to the police officers was marked "RDP."[26] The two (2) other plastic sachets confiscated from Caiz were marked "RDP1"[27] and "RDP2."[28]

PO1 Valle testified that the seized sachets were marked by SPO1 Patricio immediately after Caiz was arrested.[29] On the other hand, SPO1 Patricio testified that the seized sachets were marked at the police station.[30]

After marking, SPO1 Patricio "surrendered the [marked plastic sachets] to their investigator, PO3 Michael Datuin[,] at their Lingayen Office for transmittal to the crime laboratory."[31]

Forensic Chemist Police Senior Inspector Emelda Besarra Roderos issued an initial laboratory report stating that the contents of the heat-sealed transparent plastic sachet weighed 0.05 gram and tested positive for shabu.[32]

Caiz presented a different version of the facts. She testified that on February 20, 2008, at around 10:00 a.m.,[33] "she was

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[23] CA *rollo*, p. 68.

[24] *Rollo*, p. 4.

[25] *Id*.

[26] CA *rollo*, p. 36, Brief for accused-appellant.

[27] *Id*.

[28] *Id*.

[29] *Id*. at 42.

[30] *Id*.

[31] *Rollo*, p. 4.

[32] *Id*.

[33] CA *rollo*, p. 36.

putting her grandson to sleep . . . when she saw somebody enter her aunt's yard."[34]

She shouted and went to her mother's house.[35] However, two (2) men were following her and asking for the marked money.[36]

Caiz informed the men that she had nothing.[37] Inside her mother's house, she was "strip-searched by PO1 Valle."[38] Still, PO1 Valle was unable to retrieve anything from her.[39] She was then invited by the police officers to go to the police station.[40] She could not refuse because a gun was pointed at her so they first went to the Barangay Hall at Pinmaludpod, Urdaneta City.[41] Caiz narrated that she stayed inside the vehicle and that there was another person left with her inside the vehicle. That person, whom she did not name, showed her the plastic sachets allegedly confiscated from her.[42] Caiz stated that it was the first time she saw the plastic sachets.[43]

They then went to the office of the Special Operations Group of the Philippine National Police Office in Lingayen. Caiz testified that while she was there, "she was offered a meal and allowed to watch TV."[44] After, they proceeded to the Urdaneta City Police Station. Caiz alleged that the seized sachets were marked at the police station.[45] A medical examination was conducted on her at a hospital.[46]

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[34] *Rollo*, p. 6.

[35] *Id*.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] CA *rollo*, p. 54.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] *Id*.

[44] *Id*.

[45] *Id*. at 42.

[46] *Id*. at 37.

After two (2) days of incarceration at the police station,[47] Caiz was brought to the prosecutor's office and was made to sign documents. She was then "committed to the Urdaneta City District Jail."[48]

In the Decision dated July 18, 2012,[49] the trial court found Caiz guilty of violating Section 5 of Republic Act No. 9165, but dismissed the case for violation of Section 11.

The trial court reasoned that Caiz was positively identified by the prosecution's witnesses as the seller of shabu. She sold "one heat-sealed plastic sachet containing white crystalline substance"[50] to PO1 Valle. The sachet was found to contain 0.05 gram of shabu. The seized sachet and the marked money were presented in court.[51]

The trial court held that the charge against Caiz for illegal possession of dangerous drugs was to be absorbed by the crime of illegal sale, thus:

> As to the charge of illegal possession of dangerous drugs against said accused, the same is already absorbed in the crime of illegal sale. Based on the testimonies of the prosecution witnesses, accused was arrested and frisked immediately after the consummation of the sale transaction resulting in the recovery of two more plastic sachets of shabu from her pocket. The fact that the arresting officer recovered other plastic sachets containing shabu from the pocket of the accused during said illegal sale transaction is already immaterial – and will not justify the filing of a separate case of illegal possession as enunciated by the Court in the case of People *vs.* Lacerna. . . . Possession of prohibited drugs is generally inherent in the crime of

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[47] *Id*. at 54.

[48] *Id*.

[49] *Id*. at 50-56. The case was docketed as Crim. Case Nos. U-15454 & 15455 and was raffled to Branch 48 of the Regional Trial Court of Urdaneta City, Pangasinan. The Decision was penned by Presiding Judge Gonzalo P. Marata.

[50] *Id*. at 55.

[51] *Id*.

illegal sale of dangerous drugs and that conviction for both offenses is not feasible.[52] (Citations omitted)

The dispositive portion of the Regional Trial Court Decision reads:

> WHEREFORE, judgment is hereby rendered finding the accused GUILTY beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs and the court sentences her to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00.
>
> The case of Illegal Possession of Dangerous Drugs filed against said accused is hereby DISMISSED.
>
> The prohibited drugs presented in court as evidence is ordered forfeited in favor of the government and shall be forwarded to the PDEA Office for the proper disposition.
>
> SO ORDERED.[53]

In her appeal before the Court of Appeals, Caiz argued that there were several procedural lapses committed by the police officers.[54] Section 86[55] of the Implementing Rules and Regulations

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[52] *Id*. at 55-56.

[53] *Id*. at 56.

[54] *Id*. at 40.

[55] Implementing Rules and Regulations of Rep. Act No. 9165 (2002), Sec. 86 provides:

> SEC. 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. –
>
> . . . . . . . . .
>
> (a) Relationship/Coordination between PDEA and Other Agencies. – The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct the anti-drug operations in support of the PDEA; *Provided*, that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations; *Provided, further*, that, in any case, said agencies shall inform the PDEA of their anti-drug operations within twenty-four (24) hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used

of Republic Act No. 9165 requires coordination with the Philippine Drug Enforcement Agency, which the police officers did not do. The place where the seized sachets were marked was not proven because the police officers gave different testimonies.[56]

Further, the confiscation receipts prepared by SPO1 Patricio were not signed by Caiz, her representative or counsel, a representative from the media, a representative from the Department of Justice, or any public official.[57] Caiz was not given a copy.[58]

Caiz claimed that there were no photographs of the seized sachets and the booking sheet of accused was prepared on the day after she was arrested.[59] The police officer who received the request for laboratory examination and the forensic chemist were not presented in court.[60] She also alleged that the prosecution was unable to show "who had the custody and safekeeping of the drugs after their examination and pending their presentation in court."[61]

On the other hand, the Office of the Solicitor General argued that the trial court correctly convicted Caiz because the

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in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; Provided, furthermore, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; *Provided, finally*, that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court.

[56] CA *rollo,* p. 42.

[57] *Id*. at 43.

[58] *Id*.

[59] *Id*.

[60] *Id*. at 45.

[61] *Id*. at 46.

prosecution was able to prove that the sale of illegal drugs took place, and the items seized were presented in evidence.[62]

In addition, the required procedure in handling the seized items was substantially complied with. The police officers who conducted the buy-bust operation coordinated with the Philippine Drug Enforcement Agency.[63] The Office of the Solicitor General likewise argued that non-compliance with Section 21 of Republic Act No. 9165 "would not necessarily render the evidence obtained from the drug operation as inadmissible, but it would only affect the merit or probative value of such evidence."[64]

The Office of the Solicitor General claimed that although there were inconsistencies in the testimonies of PO1 Valle and SPO1 Patricio on where the seized item was marked, the inconsistency "[did] not affect the credibility of the witnesses."[65] The inconsistencies in their testimonies referred to trivial and insignificant matters.[66]

On the confiscation receipts, the Office of the Solicitor-General cited *People v. Rosialda*[67] in that "[t]he failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible."[68]

On the non-presentation of the forensic chemist, the Office of the Solicitor General cited *People v. Amansec*[69] and argued

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[62] *Id*. at 69-70.

[63] *Id*. at 78.

[64] *Id*. at 82.

[65] *Id*. at 78.

[66] *Id*.

[67] 643 Phil. 712 (2010) [Per *J*. Velasco, Jr., First Division].

[68] *Id*. at 726-727.

[69] 678 Phil. 831 (2011) [Per *J*. Leonardo-De Castro, First Division]: "Furthermore, there is nothing in Republic Act No. 9165 or in its implementing

that the laboratory reports and chemistry reports are sufficient to prove that the chain of custody was not broken.[70]

The Court of Appeals affirmed the ruling of the Regional Trial Court.[71] It held that Caiz failed to present evidence that the chain of custody was broken.[72] It further held that non-compliance with Article II, Section 21 of Republic Act No. 9165 does not justify Caiz's acquittal. "What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[73]

The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, the foregoing considered, the instant appeal is hereby **DISMISSED** and the appealed Decision dated July 18, 2012 **AFFIRMED** *in toto.* No costs.
>
> **SO ORDERED**.[74] (Emphasis in the original)

Caiz filed a Notice of Appeal on September 26, 2014.[75]

The Notice of Appeal was noted and given due course in the Court of Appeals' October 20, 2014 Resolution.[76]

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rules, which requires each and everyone who came into contact with the seized drugs to testify in court. As long as the chain of custody of the seized drug was clearly established to have not been broken and the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand" (*Id*. at 857).

[70] CA *rollo,* p. 81.

[71] *Rollo*, pp. 2-15. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Remedios A. Salazar-Fernando (Chair) and Ramon R. Garcia of the Second Division, Court of Appeals, Manila.

[72] *Id*. at 13.

[73] *Id*. at 12.

[74] *Id*. at 14.

[75] CA *rollo*, p. 108.

[76] *Id*. at 111.

The case records were elevated to this Court on December 1, 2014.[77]

In the Resolution[78] dated January 28, 2015, this Court noted the records forwarded by the Court of Appeals and notified the parties that they could file their respective supplemental briefs within 30 days from notice.

The Office of the Solicitor General filed a Manifestation and Motion[79] stating that it would not file a supplemental brief since Caiz did not raise new issues in her appeal.[80] Counsel for Caiz filed a Manifestation[81] informing this Court that it would no longer file a supplemental brief.

We resolve the following issues:

First, whether the guilt of accused-appellant Gloria Caiz y Talvo for violation of Section 5 of Republic Act No. 9165 was proven beyond reasonable doubt; and

Second, whether the rules on the chain of custody of the corpus delicti were observed.

We find for accused-appellant.

The prosecution was unable to prove the integrity of the corpus delicti. The non-compliance with the requirements of Section 21 of Republic Act No. 9165 was not justified.

**I**

The elements of violation of Section 5[82] of Republic Act No. 9165 are:

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[77] *Rollo*, p. 1.

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

[79] *Id*. at 23-25.

[80] *Id*. at 23.

[81] *Id*. at 28-31.

[82] Rep. Act No. 9165 (2002), Sec. 5 provides:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and*

(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. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.[83] (Emphasis in the original)

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*Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[83] *People v. Casacop y de Castro,* G.R. No. 208685, March 9, 2015, 752 SCRA 151, 161 [Per *J.* Leonen, Second Division], citing *People v. Almodiel,* 694 Phil. 449, 460 (2012) [Per *J.* Carpio, Second Division].

The prosecution must also establish the integrity of the dangerous drug, being the corpus delicti of the case.[84]

Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640,[85] states the procedure to be observed by law enforcement officers in dangerous drugs cases:

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 *dangerous* drugs*, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment* shall, immediately after seizure and confiscation, *conduct a physical inventory of the seized items* 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, *with an elected public official and a representative of the National Prosecution Service or the media* 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, finally, That noncompliance of 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 and custody over said items.*

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[84] *People v. Enumerable y De Villa,* G.R. No. 207993, January 21, 2015, 747 SCRA 495, 506-507 [Per *J.* Carpio, Second Division]

[85] An Act to Further Strengthen the Anti-Drug Campaign of the Government, Amending for the Purpose Section 21 of Republic Act No. 9165, Otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" (2014).

. . . . . . . . .

(3) A certification of the forensic laboratory examination results, which shall be *done by* the forensic laboratory examiner, shall be issued *immediately upon* the receipt of the subject item/s: *Provided,* That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued *immediately upon completion of the said examination and certification*[.][86] (Emphasis supplied)

In view of the amendments to Republic Act No. 9165, the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165 were also amended, thus:

SECTION 1. *Implementing Guidelines.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

A. *Marking, Inventory and Photograph; Chain of Custody Implementing Paragraph "a" of the IRR*

A.1. The apprehending or seizing officer having initial custody and control of the seized or confiscated dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, mark, inventory and photograph the same in the following manner:

A.1.1. The marking, physical inventory and photograph of the seized/confiscated items shall be conducted where the search warrant is served.

A.1.2. The marking is the placing by the apprehending officer or the poseur-buyer of his/her initial and signature on the item/s seized.

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[86] The italicized phrases are the amendments introduced by Rep. Act No. 10640.

A.1.3. In warrantless seizures, the marking of the seized items in the presence of the violator shall be done immediately at the place where the drugs were seized or at the nearest police station or nearest office of the apprehending officer/team, whichever is practicable. The physical inventory and photograph shall be conducted in the same nearest police station or nearest office of the apprehending officer/team, whichever is practicable.

A.1.4. In cases when the execution of search warrant is preceded by warrantless seizures, the marking, inventory and photograph of the items recovered from the search warrant shall be performed separately from the marking, inventory and photograph of the items seized from warrantless seizures.

A.1.5. The physical inventory and photograph of the seized/confiscated items shall be done in the presence of the suspect or his/her representative or counsel, with elected public official and a representative of the National Prosecution Service (NPS) or the media, who shall be required to sign the copies of the inventory of the seized or confiscated items and be given copy thereof. In case of their refusal to sign, it shall be stated "refused to sign" above their names in the certificate of inventory of the apprehending or seizing officer.

A.1.6. A representative of the NPS is anyone from its employees, while the media representative is any media practitioner. The elected public official is any incumbent public official regardless of the place where he/she is elected.

A.1.7. To prevent switching or contamination, the seized items, which are fungible and indistinct in character, and which have been marked after the seizure, shall be sealed in a container or evidence bag and signed by the apprehending/seizing officer for submission to the forensic laboratory for examination.

A.1.8. In case of seizure of plant sources at the plantation site, where it is not physically possible to count or weigh the seizure as a complete entity, the seizing officer shall estimate its count or gross weight or net weight, as the case may be. If it is safe and practicable, marking, inventory and photograph of the seized plant sources may

be performed at the plantation site. Representative samples of prescribed quantity pursuant to Board Regulation No. 1, Series of 2002, as amended, and/or Board Regulation No. 1, Series of 2007, as amended, shall be taken from the site after the seizure for laboratory examination, and retained for presentation as the *corpus delicti* of the seized/ confiscated plant sources following the chain of custody of evidence.

A.1.9. *Noncompliance, under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.*

*A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.*

A.1.11. The chain of custody of evidence shall indicate the time and place of marking, the names of officers who marked, inventoried, photographed and sealed the seized items, who took custody and received the evidence from one officer to another within the chain, and further indicating the time and date every time the transfer of custody of the same evidence were made in the course of safekeeping until submitted to laboratory personnel for forensic laboratory examination. The latter shall continue the chain as required in paragraph B.5 below.

B. Laboratory Examination, Custody and Report Implementing Paragraphs "b" and "c" of the IRR

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B.5. In any case, the chain of custody of the seized/confiscated items received from the apprehending officer/team, and

examined in the forensic or crime laboratory shall be observed, where it shall document the chain of custody each time a specimen is handled, transferred or presented in court until its disposal and every individual in the chain of custody shall be identified following the laboratory control and chain of custody form. (Emphasis supplied)

## II

Here, the lapses of the police officers in the procedure for handling seized sachets containing dangerous drugs are numerous and unjustified such that there is reasonable doubt whether the integrity of the corpus delicti was preserved.

*People v. Kamad*[87] summarized the links in the chain of custody that must be established by the prosecution:

*[F]irst*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[88] (Emphasis in the original)

First, the place where the seized sachets were marked was not established with certainty.

Accused-appellant alleges that the marking of the sachets of shabu was not done at the place of arrest, but at the police station.[89] She claims that there was a nearer police station where the marking could have been done, specifically:

The marking of the alleged three (3) sachets of shabu with PI Patricio's initials . . . was not made at the place of arrest but only at the police

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[87] 624 Phil. 289 (2010) [Per *J*. Brion, Second Division].

[88] *Id*. at 304.

[89] Accused-appellant did not specify whether the markings were done at the police station in Lingayen or at the police station in Urdaneta.

station. This took place only after they have passed by the barangay hall of Pinmaludpod, then the police's safehouse located at Zone 5, Brgy. Pinmaludpod, then to the office of S[pecial] O[perations] G[roup] in Lingayen, Pangasinan and have brought the accused-appellant to the hospital for medical examination.[90]

On the other hand, the testimonies of the police officers reveal that they were confused as to the place where the seized sachets were marked. PO1 Valle testified:

Q: What did you [sic] Patricio do after you turned over those plastic sachets?
A: He placed marking.

Q: What marking?
A: RDP.[91]

On the other hand, SPO1 Patricio testified:

Q: By the way, Mr. Witness, where were you when you marked these 3 plastic sachets?
A: In our office, sir.[92]

PO1 Valle's testimony seems to imply that the seized sachets were marked at the place where the buy-bust operation was conducted. On the other hand, SPO1 Patricio testified that the seized sachets were marked at the police station.

The prosecution argues that the inconsistencies in the testimonies of the police officers strengthen the case since these show that the police officers were not rehearsed witnesses. In addition, the place where the seized sachets were marked is not an essential element in establishing that the sale of illegal drugs took place.[93]

Although it may be true that the place of marking is not an essential element, the failure to establish with certainty where

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[90] CA *rollo*, p. 42.

[91] *Id*.

[92] *Id*.

[93] *Id*. at 78.

the seized sachets were marked affects the integrity of the chain of custody of the corpus delicti.

*People v. Dahil*[94] has discussed the purpose and importance of marking evidence:

Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the *corpus* of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, this, preventing switching, planting or contamination of evidence.[95] (Citations omitted)

Second, the police officers failed to have the confiscation receipts signed by accused-appellant, by her representative or counsel, by a representative from the media, the Department of Justice, or by an elected public official.[96] The police officers likewise failed to give a copy of the confiscation receipts to accused-appellant.[97] The prosecution does not refute these procedural lapses but argues that substantial compliance with the chain of custody rule is sufficient,[98] citing *People v. Rosialda*:[99]

*The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal and does not automatically render accused-appellant's arrest illegal or the items seized/confiscated from him inadmissible.* Indeed, the implementing rules offer some flexibility when a proviso added that 'non-compliance with these requirements under justifiable grounds,

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[94] G.R. No. 212196, January 12, 2015, 745 SCRA 221 [Per *J*. Mendoza, Second Division].

[95] *Id*. at 241.

[96] CA *rollo*, p. 43.

[97] *Id*.

[98] *Id*. at 79.

[99] 643 Phil. 712 (2010) [Per *J.* Velasco, Jr., First Division].

as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.' The same provision clearly states as well, that it must still be shown that there exists justifiable grounds and proof that the integrity and evidentiary value of the evidence have been preserved.

. . . . . . . . .

. . . The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.

*To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.*[100] (Emphasis in the original)

In this case, the integrity of the corpus delicti is in doubt because the police officers cannot even state with certainty where the seized sachets were marked.

Third, none of the witnesses testified that the seized sachets were photographed. This leads us to believe that no photos of the seized sachets were taken by the buy-bust team.[101]

Fourth, accused-appellant's arrest was not immediately entered in the booking sheet.[102] SPO1 Patricio testified on cross-examination:

Q: After the arrest, Mr. Witness, you said and identified a while ago that you made a booking that was prepared by you?
A: It was prepared by me in the office, sir.

Q: At Lingayen?
A: Yes, sir.

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[100] *Id.* at 726-727, citing *People v. Rivera*, 590 Phil. 894, 913-914 (2008) [Per *J.* Chico-Nazario, Third Division].

[101] CA *rollo*, pp. 51-54.

[102] *Id.* at 43.

Q: On what date was it prepared, Mr. Witness?
A: That date February 20.

Q: Showing to you the booking sheet you identified a while ago. Will you go over the same and tell us on what date was it prepared, Mr. Witness, according to the booking sheet? What date?
A: 21 February 2008, sir.

Q: And the arrest was made on February 2008?
A: Yes, sir.

Q: You said a while ago that it was made on the same date the booking sheet was prepared by you on the same date?
A: No, sir, 21. It was placed on the booking sheet.

Q: So, it was made on the 21st not on February 20 (sic)?
A: Yes, sir.[103]

The totality of the procedural lapses committed by the police officers leads this Court to doubt the integrity of the *corpus delicti.*

**III**

Accused-appellant argues that the non-coordination of the buy-bust operation with the Philippine Drug Enforcement Agency is a procedural lapse that overturns the presumption of regularity in the performance of duties.[104]

The alleged non-coordination of the police officers with the Philippine Drug Enforcement Agency did not render the buy-bust operation invalid.

*People v. Rebotazo*[105] has discussed that Section 86[106] of Republic Act No. 9165 does not state any consequence in case

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

[104] *Id*. at 41-42. Coordination with the Philippine Drug Enforcement Agency is a requirement under Section 86 of the Implementing Rules and Regulations of Republic Act No. 9165, as amended.

[105] 711 Phil. 150 (2013) [Per *C.J*. Sereno, First Division].

[106] Rep. Act No. 9165 (2002), Sec. 86 provides:

Section 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — The

a buy-bust operation is not coordinated with the Philippine Drug Enforcement Agency, thus:

> It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.
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> As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving

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Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: *Provided*, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, that personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided*, *however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, that the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs.[107]

This Court has ruled in other cases[108] that nothing in Section 86 states that non-coordination with the PDEA renders the buy-bust operation invalid.

**IV**

*Mallillin v. People*[109] emphasizes why proof of the chain of custody in dangerous drugs cases must be strictly complied with:

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases — by accident or otherwise — in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard

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[107] *People v. Rebotazo,* 711 Phil. 150, 177-178 (2013) [Per *C.J.* Sereno, First Division], citing *People v. Sta. Maria*, 545 Phil. 520, 531-532 (2007) [Per *J.* Garcia, First Division].

[108] See *People v. Salvador,* 726 Phil. 389, 403-405 (2014) [Per *J.* Del Castillo, Second Division]; *People v. Adrid,* G.R. No. 201845, March 6, 2013, 692 SCRA 683, 703-704 [Per *J.* Velasco, Jr., Third Division]; *People v. Mondejar,* 675 Phil. 91, 107 (2011) [Per *J.* Sereno, Second Division]; *People v. Roa,* 634 Phil. 437, 448-449 (2010) [Per *J.* Perez, Second Division].

[109] 576 Phil. 576 (2008) [Per *J.* Tinga, Second Division].

more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[110]

The law recognizes that there may be instances when exact compliance with the required procedure is not observed. Thus, the Implementing Rules and Regulations of Section 21 of Republic Act No. 9165, as amended, provides:

> SECTION 1. *Implementing Guidelines.* — 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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> . . . . . . . . .
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> A.1.9. Noncompliance, under justifiable grounds, with the requirements of Section 21 (1) of RA No. 9165, as amended, shall not render void and invalid such seizures and custody over the items provided the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team.
>
> A.1.10. Any justification or explanation in cases of noncompliance with the requirements of Section 21 (1) of RA No. 9165, as amended, shall be clearly stated in the sworn statements/affidavits of the apprehending/seizing officers, as well as the steps taken to preserve the integrity and evidentiary value of the seized/confiscated items. Certification or record of coordination for operating units other than the PDEA pursuant to Section 86 (a) and (b), Article IX of the IRR of RA No. 9165 shall be presented.

Here, the prosecution does not offer any explanation why there were several procedural lapses. The prosecution's argument

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[110] *Id*. at 588-589.

that there is a presumption that "official duty has been regularly performed"[111] will not suffice. Thus:

> It needs no elucidation that the presumption of regularity in the performance of official duty must be seen in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption, in other words, obtains only where nothing on record suggests that the law enforcers involved deviated from the standard conduct of official duty as provided for in the law. Otherwise, where the official act in question is irregular on its face, an adverse presumption arises as a matter of course.[112] (Citations omitted)

*People v. Garry dela Cruz*[113] acquitted the accused as the prosecution failed to establish the corpus delicti due to non-compliance with the rule on the chain of custody:

> Non-compliance is tantamount to failure in establishing identity of corpus delicti, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused.[114]

Courts are reminded to exercise a higher level of scrutiny when deciding cases involving miniscule amounts of dangerous drugs. There should be stricter compliance with the rule on the chain of custody when the amount of the dangerous drug is minute

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[111] CA *rollo*, p. 73. RULES OF COURT, Rule 131, Sec. 3(m) provides:

SEC. 3. *Disputable presumptions*. – The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

. . . . . . . . .

(m) That official duty has been regularly performed[.]

[112] *People v. Gutierrez,* 614 Phil. 285, 298 (2009) [Per *J*. Carpio Morales, Second Division].

[113] G.R. No. 205821, October 1, 2014, 737 SCRA 486 [Per *J.* Leonen, Second Division].

[114] *Id*. at 496.

due to the possibility that the seized item was tampered.[115] We reiterate the words in *People v. Holgado*:[116]

> It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of *shabu* under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[117]

**WHEREFORE**, premises considered, the Court of Appeals Decision dated August 29, 2014 in CA-G.R. CR-H.C. No. 06167 is **REVERSED** and **SET ASIDE**. Accused-appellant Gloria Caiz *y* Talvo is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention unless she is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution is **DIRECTED** to report to this Court, within five (5) days from receipt of this Decision, the action she has taken. Copies shall also be furnished to the Director

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[115] *Mallillin v. People,* 576 Phil. 576, 588 (2008) [Per *J*. Tinga, Second Division].

[116] G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per *J.* Leonen, Third Division].

[117] *Id.* at 577.

General of the Philippine National Police and to the Director General of the Philippine Drug Enforcement Agency for their information.

The Regional Trial Court is **DIRECTED** to turn over the seized sachet of methamphetamine hydrochloride to the Dangerous Drugs Board for destruction in accordance with law.

**SO ORDERED.**

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

*Mendoza, J.,* on official leave.

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**SPECIAL FIRST DIVISION**

[G.R. No. 215764. July 13, 2016]

**RICHARD K. TOM,** *petitioner, vs.* **SAMUEL N. RODRIGUEZ,** *respondent.*

**SYLLABUS**

**REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; COURT RULING THAT A CORPORATION EXERCISES ITS POWERS AND TRANSACTS ITS BUSINESS THROUGH ITS BOARD OF DIRECTORS AND/OR OFFICERS AND AGENTS WHEN AUTHORIZED BY A BOARD RESOLUTION OR ITS BY-LAWS, UPHELD; CASE AT BAR.—** In granting the injunctive writ [in case at bar], the Court upheld the established rule that a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts. x x x In his Motion for Reconsideration with Motion to Dissolve the Injunctive Writ, Rodriguez asserts that the Court's July 6, 2015 Decision has

been rendered moot and academic with the execution of the Memorandum of Agreement (MOA) dated May 25, 2015 x x x As the provisions of the MOA are in direct contravention of the [Court's] precepts [in granting the injunctive writ] earlier espoused in the July 6, 2015 Decision, its execution cannot in any way affect, change, or render the Court's previous disquisitions moot and academic. In fact, the MOA is, clearly and in all respects, contrary to law. Therefore, the writ of preliminary injunction must stand.

**APPEARANCES OF COUNSEL**

*Aldevera Law Office* for petitioner.
*Etulle & Etulle Law Office* for respondent.

**R E S O L U T I O N**

**PERLAS-BERNABE, *J*.:**

For the Court's resolution is the Motion for Reconsideration with Motion to Dissolve the Injunctive Writ[1] filed by respondent Samuel N. Rodriguez (Rodriguez) seeking the reconsideration of the Court's Decision[2] dated July 6, 2015 and the dissolution of the writ of preliminary injunction issued by the Court against him, his agents, and all persons acting under his authority to refrain and desist from further exercising any powers of management and control over Golden Dragon International Terminals, Inc. (GDITI).

In the Court's July 6, 2015 Decision, the Court found that the issuance of a temporary restraining order (TRO) and/or a writ of preliminary injunction was warranted to enjoin the Regional Trial Court of Nabunturan, Compostela Valley, Branch 3 (RTC-Nabunturan) from implementing its November 13, 2013[3] and

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[1] Dated September 29, 2015. *Rollo*, pp. 268-274.

[2] *Id.* at 259-267. Penned by Associate Justice Estela M. Perlas-Bernabe with Chief Justice Maria Lourdes P.A. Sereno and Associate Justices Teresita J. Leonardo-de Castro, Lucas P. Bersamin, and Jose Portugal Perez concurring.

[3] *Id.* at 109-113. Penned by Judge Dorothy P. Montejo-Gonzaga.

December 11, 2013[4] Orders in the specific performance case docketed as Civil Case No. 1043, which, *inter alia*, placed the management and control of GDITI to Rodriguez.[5]

In granting the injunctive writ, the Court upheld the established rule that a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts.[6] To be sure, Section 23 of Batas Pambansa Bilang 68,[7] otherwise known as "The Corporation Code of the Philippines," states:

> SEC. 23. *The board of directors or trustees*. — Unless otherwise provided in this Code, **the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors** or trustees to be elected from among the holders of stocks, or where there is no stock, from among the members of the corporation, who shall hold office for one (1) year until their successors are elected and qualified.
>
> Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines. (Emphasis and underscoring supplied)

In his Motion for Reconsideration with Motion to Dissolve the Injunctive Writ, Rodriguez asserts that the Court's July 6, 2015 Decision has been rendered moot and academic with the execution of the Memorandum of Agreement[8] (MOA) dated

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[4] *Id.* at 114-116.

[5] *Id.* at 265.

[6] *Id.* See also *Raniel v. Jochico*, 546 Phil. 54, 60 (2007).

[7] Approved on May 1, 1980.

[8] *Rollo*, pp. 277-278. Mancao was represented by Atty. Wealthyniel C. Yap; see *id.* at 278.

May 25, 2015 signed by himself, petitioner Richard K. Tom (Tom), and Cezar O. Mancao (Mancao), apparently one of the original plaintiffs[9] in Civil Case No. 1043 from which the present incident originated.[10] Pursuant to the MOA, Rodriguez, Tom, and Mancao have come to an agreement with respect to the operation, control, and management of the ports operated by GDITI, in that: *(a)* the port of General Santos City shall be managed by Rodriguez and/or his authorized representative; *(b)* the ports of Davao City and Panabo City shall be managed by Tom and/or his authorized representative; and *(c)* the ports of Manila, Batangas, and Bataan shall be managed by Mancao and/or his authorized representative.[11]

Rodriguez asseverates that with the execution of the MOA, the elements necessitating the issuance of an injunctive writ no longer exist. Moreover, he discloses that GDITI had already filed a Motion for Intervention[12] in Civil Case No. 1043, as such, its interests are already protected.[13]

The submissions have no merit.

To reiterate, the Court granted the writ of preliminary injunction on the ground that a corporation can only exercise its powers and transact its business through its board of directors and through its officers and agents when authorized by a board resolution or its by-laws.[14] As held in *AF Realty & Development, Inc. v. Dieselman Freight Services, Co.*:[15]

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[9] The original plaintiff in Civil Case No. 1043 pending before the RTC-Nabunturan is referred to as "Cezar O. Mancao II" but in the present motion for reconsideration, Rodriguez claims that the "Cezar O. Mancao" who executed and signed the May 25, 2015 MOA is likewise one of the parties to the said civil case. (See *id.* at 63.)

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

[11] *Id.* at 277.

[12] Dated June 8, 2015. *Id.* at 279-286.

[13] *Id.* at 271.

[14] *Riosa v. Tabaco La Suerte Corporation*, 720 Phil. 586, 599 (2013).

[15] 424 Phil. 446 (2002).

Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. Just as a natural person may authorize another to do certain acts in his behalf, so may the board of directors of a corporation validly delegate some of its functions to individual officers or agents appointed by it. Thus, contracts 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/authorization, the rule is that the declarations of an individual director relating to the affairs of the corporation, but not in the course of, or connected with, the performance of authorized duties of such director, are held not binding on the corporation.[16]

As the provisions of the MOA are in direct contravention of the foregoing precepts, which the Court had earlier espoused in the July 6, 2015 Decision, its execution cannot in any way affect, change, or render the Court's previous disquisitions moot and academic. In fact, the MOA is, clearly and in all respects, contrary to law. Therefore, the writ of preliminary injunction must stand.

Parenthetically, on October 29, 2015, Tom filed a Manifestation[17] informing the Court that he is no longer the President of GDITI. Nonetheless, on March 20, 2015, he was elected as Treasurer during the Annual/Regular Stockholders Meeting conducted for the purpose of electing the members of GDITI's Board of Directors.[18] As Tom's position in GDITI's Board of Directors neither affects nor alters the Court's stance in this pending incident, the Court merely resolves to note the same.

**WHEREFORE,** the Court resolves to **DENY WITH FINALITY** the Motion for Reconsideration with Motion to Dissolve the Injunctive Writ filed by respondent Samuel N. Rodriguez.

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[16] *Id.* at 454.

[17] Dated October 26, 2015. *Rollo*, pp. 309-311.

[18] *Id.* at 309-310.

No further pleadings or motions shall be entertained. Let entry of judgment be made in due course.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Perez, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 205010. July 18, 2016]

**PETRON GASUL LPG DEALERS ASSOCIATION AND TOTALGAZ LPG DEALERS ASSOCIATION,** *petitioners, vs.* **ELENA LAO, IMELDA LAO, POMPIDOU GOLANGCO, JEREMY WILSON GOLANGCO, CARMEN CASTILLO, AND/OR OCCUPANTS OF BAGUIO GAS CORPORATION,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT (SW); DISCUSSED.** — A search warrant (SW) is defined as a written order issued in the name of the People of the Philippines, signed by a judge, and directed to a peace officer commanding him to search for the personal property described therein and bring it to the court. In *Malaloan v. Court of Appeals,* the Court held that the requisites, procedure and purpose for SW issuance are totally different from those of a criminal action. It stressed that the application for and issuance of a SW is not a criminal action but a judicial process, more particularly, a special criminal process designed to respond to an incident in the main case, if one has been instituted, or in anticipation thereof. The power to issue SW is inherent in all courts, such that the power of

courts to issue SWs where the place to be searched is within their jurisdiction is not intended to exclude other courts from exercising the same power. In addition, SW shall be issued only upon probable cause personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. In turn, probable cause for SW refers to such "facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched."

2. **ID.; ID.; ID.; ID.; APPLICATION FOR SEARCH WARRANT (SW); GENERALLY, IT MUST BE FILED WITH THE COURT WHICH HAS TERRITORIAL JURISDICTION WHERE THE OFFENSE WAS ALLEGEDLY COMMITTED; BUT FOR COMPELLING REASONS STATED IN THE APPLICATION, IT MAY BE FILED IN ANOTHER COURT.—** Section 2 of Rule 126 of the Rules of Court provides for the proper court where an SW application shall be filed, to wit: x x x An application for search warrant shall be filed with the following: a) Any court within whose territorial jurisdiction a crime was committed. b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. x x x Generally, the SW application must be filed with the court which has territorial jurisdiction over the place where the offense was alleged to be committed. This, however, is not an iron-clad rule. For compelling reasons, which must be expressly stated in the application, an SW application may be filed in a court other than the one having jurisdiction over the place where the purported offense was committed and where the SW shall be enforced.

**APPEARANCES OF COUNSEL**

*Adarlo Caoile & Associates* for petitioners.
*Cabato Law Office* for respondents.

## DECISION

**DEL CASTILLO, *J.*:**

Assailed in this Petition for Review on *Certiorari* is the April 16, 2012 Decision[1] of the Court of Appeals (CA) in CA-GR. CV Nos. 88723 and 89313. The CA partially granted the appeal by setting aside the December 29, 2005 Resolution[2] and May 22, 2006 Order[3] of the Regional Trial Court of La Trinidad, Benguet, Branch 8 (RTC-La Trinidad) which granted the Motions to Quash Search Warrant (SW) Nos. 05-70 and 05-71 against Zenaida Co, Wilson Tan, Wilbert Tan, Norma Yao, Lino Sandil, Hemogenes Pacheco and/or occupants of Benguet Gas Corporation (Benguet Gas); but affirmed the December 29, 2005 Resolution[4] and March 30, 2006 Order[5] of the RTC-La Trinidad which granted the Motions to Quash SW Nos, 05-72 and 05-73 against Elena Lao, Imelda Lao, Pompidou Golangco, Jeremy Wilson Golangco, Carmen Castillo and/or occupants of Baguio Gas Corporation (Baguio Gas) for violation of Section 2(a),[6] in relation to Sections 3(c)[7] and 4[8] of *Batas Pambansa Bilang* 33

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[1] CA *rollo*, Vol, II, pp. 316-344; penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Celia C. Librea-Leagogo and Ramon A. Cruz.

[2] Records, Vol. I, pp. 105-106; penned by Presiding Judge Marybelle L. Demot Mariñas.

[3] *Id*. at 125.

[4] Records, Vol. II, pp. 207-208.

[5] *Id*. at 245.

[6] Sec. 2. Prohibited Acts.——The following acts are prohibited and penalized:

[7] Sec. 3. Definition of terms.– For the purpose of this Act, the following terms shall be construed to mean; "Illegal trading in petroleum and/or petroleum products" —

x x x x x x x x x

(c) Refilling of liquefied petroleum gas cylinders without authority from said Bureau, or refilling of another company's or firm's cylinders without such company's or firm's written authorization;

[8] Sec. 4. *Penalties*. — Any person who commits any act herein prohibited shall, upon conviction, be punished with a fine of not less than [two] TWENTY

(BP 33),[9] as amended, and for violation of Section 2(c),[10] in relation to Section 4 of BP 33, as amended. Also assailed is the December 12, 2012 CA Resolution[11] denying the Motion for Partial Reconsideration of its April 16, 2012 Decision.

***Factual Antecedents***

In his separate Affidavits[12] dated May 19, 2005, Darwin Lising (Using), Supervising Agent of the National Bureau of Investigation-Cordillera Administrative Region (NBI-CAR),

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thousand pesos (₱20,000) but not more than [ten] FIFTY thousand pesos [(₱50,000)], or imprisonment of at least two (2) [months] YEARS but not more than [one (1)] FIVE: (5) years, or both, in the discretion of the court. IN CASES OF SECOND AND SUBSEQUENT CONVICTION UNDER THIS ACT, THE PENALTY SHALL BE BOTH FINE AND IMPRISONMENT AS PROVIDED HEREIN. Furthermore, the petroleum and/or petroleum products, subject matter of the illegal trading, ADULTERATION, SHORTSELLING, hoarding, overpricing [and] OR misuse, shall be forfeited in favor of the Government: *Provided*, That if the petroleum and/or petroleum products have already been delivered and paid for, THE OFFENDED PARTY [the payment made] shall be INDEMNIFIED TWICE THE AMOUNT PAID [the subject of forfeiture], and if the seller who has not yet delivered has been fully paid, the price received shall be returned to the buyer WITH AN ADDITIONAL AMOUNT EQUIVALENT TO SUCH PRICE; and in the addition, if the offender is [a trader] AN OIL COMPANY, MARKETER, DISTRIBUTOR, REFILLER, DEALER, SUB-DEALER AND OTHER RETAIL OUTLETS, OR HAULER, the cancellation of his license.

x x x x x x x x x

[9] An Act Defining and Penalizing Prohibited Acts Inimical to the Public Interest and National Security Involving Petroleum and/or Petroleum Products, Prescribing Penalties Therefor and for Other Purposes, promulgated on June 6, 1979.

[10] Sec. 2. Prohibited Acts. — The following acts are prohibited and penalized:

x x x x x x x x x

(c) Underdelivery or underfilling beyond authorized limits in the sale of petroleum products or possession of underfilled liquefied petroleum gas cylinder for the purpose of sale, distribution, transportation, exchange or barter;

x x x x x x x x x

[11] CA *rollo*, Vol. II, pp. 383-386.

[12] Records, Vol. I, pp. 7-9, 19-21; Vol. II, pp. 7-9, 19-21.

stated that on March 1, 2005, Atty. Genesis Adarlo (Atty. Adarlo), counsel of private complainants LPG Dealers Associations (Shellane Dealers Association, Inc., Petron Gasul Dealers Association, Inc., Totalgaz Dealers Association, Inc. and Caltex Starflame LPG Dealers Association) requested assistance from NBI-CAR for the investigation and if necessary, the prosecution of persons and/or establishments in the Cordillera and Mountain Province engaged in illegal trade of petroleum products and/or sale of underfilled liquefied petroleum gas (LPG) or possession of underfilled LPG cylinders in violation of BP 33, as amended.[13]

Lising averred that upon his verification, among the suspected persons and/or establishments that violated BP 33, as amended, were Benguet Gas, which is located at Km. 14, Caponga, Tublay, Benguet, and Baguio Gas, which is located at Km. 3, Naguilian Road, Irisan, Baguio City; based on their Articles of Incorporation[14] and General Information Sheet[15] respectively, Benguet Gas is majority-owned and controlled by Zenaida Co, Wilson Tan, Wilbert Tan, Norma Yao, Lino Sandil and Hermogenes Pacheco (Benguet Gas owners); while Baguio Gas is majority-owned and controlled by Elena Lao, Imelda Lao, Pompidou Golangco, Jeremy Wilson Golangco and Carmen Castillo (Baguio Gas owners).

Lising also averred that Atty. Adarlo certified that Benguet Gas and Baguio Gas were not authorized to refill LPG cylinders bearing the brands of Pilipinas Shell Petroleum Corporation, Petron Gasul Corporation, Total (Philippines) Corporation/Superkalan Gaz Corporation, and Caltex (Philippines), Inc.[16] He added that for several days in March 2005, he and other NBI-CAR operatives, particularly, Security Officer I William A. Fortea (Fortea), conducted surveillance on Benguet Gas and Baguio Gas, On April 1, 2005, he and Fortea brought empty

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

[14] Records, Vol. I, pp. 34-35.

[15] Records, Vol. II, pp. 32-33.

[16] Records, Vol. I, p. 48; Vol. II, p. 35.

LPG cylinders with assorted brands and executed "test-buy" operations in both Benguet Gas and Baguio Gas. He confirmed that he witnessed the actual refilling of these tanks by the Benguet Gas employees for a total consideration of ₱3,300.00; and by the Baguio Gas employees for ₱3,650.00.

Upon purchase of said illegally refilled LPG tanks, Lising and Fortea brought and marked them in their office. Lising also asserted that such tanks were underfilled and had fake seals. He added that after the initial test-buy, the NBI-CAR conducted further surveillance and investigation on Benguet Gas' and Baguio Gas' illegal activities from the third week of April 2005 up to the second week of May 2005.

On May 19, 2005, on behalf of the People of the Philippines, Lising filed with the RTC-La Trinidad separate Applications[17] for Search Warrant (SW) against Benguet Gas and its owners; and Baguio Gas and its owners (respondents) for illegal trade of LPG products, and underfilling of LPG products and/or possession of underfilled LPG cylinders. He affirmed that Benguet Gas and Baguio Gas were respectively in control of the following items being utilized, kept, displayed and/or stored at their respective premises:

> A) Empty/filled Fifty Kilogram (50 Kg.) and/or Twenty-Two Kilogram (22 Kg.) and/or Eleven Kilogram (11 Kg.) and/or Five and 5/10 Kilogram (5.5 Kg.) and/or Two and 7/10 Kilogram (2.7 Kg.) [LPG] cylinders being used and/or intended to be used for the illegal trading of LPG products, *i.e.*, refilling of the branded LPG cylinders enumerated hereunder without the written authorization of their respective companies, [and for the underfilling beyond authorized limits of LPG products for the purpose of sale, distribution, transportation, exchange or barter][18] more particularly described as follows:
>
> (a) Empty/filled Shellane 50 Kg. and/or 11 Kg. LPG cylinders owned by Pilipinas Shell Petroleum Corporation;

[17] Records, Vol. I, pp. 1-3, 13-15; Vol. II, pp. 1-3, 13-15.

[18] Records, Vol. I, p. 13; Vol. II, p. 13.

(b) Empty/filled Petron Gasul 50 Kg. and/or 11 Kg. LPG cylinders owned by Petron Corporation;

(c) Empty/filled Petron Gasulette 2.7 Kg. LPG cylinders owned by Petron Corporation;

(d) Empty/filled Totalgaz 50 Kg. and/or 22 Kg. and/or 11 Kg. LPG cylinders owned by Total (Philippines) Corporation;

(e) Empty/filled Superkalan Gaz 2.7 Kg. LPG cylinders owned by Superkalan Gaz Corporation; and

(f) Empty/filled Caltex Starflame 50 Kg. and/or 11 Kg. LPG cylinders owned by Caltex Philippines, Inc.;

B) Machinery and/or equipment, such as but not limited to, LPG bullet tanks, LPG filling heads, LPG filling scales, LPG seals bearing the marks of the abovementioned companies, compressors, pumps, electric switches, and/or panel boards, being used or intended to be used for the illegal trading [and for the underfilling beyond authorized limits x x x for the purpose of sale, distribution, transportation, exchange or barter][19] of the abovementioned LPG cylinders owned by the aforementioned companies;

C) Invoices, ledgers, journals, delivery receipts, official receipts, purchase orders, cash and/or check vouchers, counter-receipts, and all other books of accounts and/or documents showing the illegal trading [and the underfilling beyond authorized limits x x x for the purpose of sale, distribution, transportation, exchange or barter][20] of the abovementioned LPG cylinders owned by the aforementioned companies; and

D) Delivery vehicles, tanker lorry, and/or conveyances being used or intended to be used for the illegal trading of the abovementioned LPG cylinders owned by the aforementioned companies;[21] [and for the underfilling beyond authorized limits of the above-mentioned LPG cylinders owned by the

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[19] *Id*. at 14.

[20] *Id*.

[21] Records, Vol. I, pp.1-2; Vol. II, pp. 1-2.

aforementioned companies for the purpose of sale, distribution, transportation, exchange or barter].[22]

Moreover, Lising declared that his SW Applications with the RTC-La Trinidad included Baguio Gas even if it is located in Baguio City because of "compelling reasons of urgency, subject, time, and place." Lising explained that a) time is of essence here as the volume of LPG cylinders being illegally refilled by Baguio Gas reflected the capacity of its facilities to perpetrate illegal acts resulting to unhampered illegal trade of LPG, and unhampered underfilling of LPG products or possession of underfilled LPG cylinders for the purpose of sale, distribution, exchange or barter; b) the brisk sales of LPG cylinders may result in the depletion of stocks, leaving nothing to be seized if an SW will be eventually issued but at a later date; and, c) the immediate hearing on and issuance of SW are precautions against possible leakage of information to Baguio Gas.

On May 19, 2005, the RTC-La Trinidad issued SW Nos. 05-70 and 05-71[23] against Benguet Gas and its owners; and SW Nos. 05-72 and 05-73[24] against respondents. It ordered Lising to make an immediate search on the above-described premises, and seize the personal properties subject of the SWs.

On May 20, 2005, Lising served upon Benguet Gas and its owners, and respondents the corresponding SWs against them. On the same day, he submitted to the RTC the respective Consolidated Returns[25] and Inventory Sheets[26] relating to the SWs. The Inventory Sheets revealed that the following were the items seized from Benguet Gas:

1) Gas Compressor – 1 unit
2) Pump Motor – 1 unit

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[22] *Id*. at 14.

[23] Records, Vol. I, pp. 58-61; penned by Presiding Judge Marybelle L. Demot Mariñas.

[24] Records, Vol. II, 45-48.

[25] Records, Vol. I, pp. 62-64; Vol. II, pp. 49-51.

[26] Records, Vol. I, pp. 69-70; Vol. II, pp. 69-70.

3) Hydraulic Operator – 1 unit
4) Filling Scale – 4 unit[s]
5) Filling Heads with Hose – 4 pieces
6) Otex weighing Scale 100 Kg – 1 unit
7) Air Compressor (Vespa) 1.5 HP – 1 unit
8) Air Compressor (Vespa) 2.0 HP – 1 unit

Tampered Cylinders
1) Shell 11 Kg – 9 [Empty]
2) Caltex 11 Kg – 9 [Empty]
3) Caltex 22 Kg – 1 [Empty]
4) Gasul 11 Kg – 1 [Empty]
5) Caltex 11 Kg – 1 (Filled)

Grinded Nameplates – 11 Kgs – 9 cylinders[27]

On the other hand, the items seized from Baguio Gas were as follows;

2 Units Wt. Scale w/o S/N Akiba
8 Units Wt. Scale No Brand Name w/o S/N
1 Unit Corken gas Compressor w/ S/N WC29794
2 Units Blackmer LPG Pump w/ SN – 2526 & BX110252 respectively
1 Unit Truck (Mitsubishi Canter) w/ P/N AHF 968
2 Units Pump Motor – US Electrical Frame# 213T
– Fuji Electric Co. Frame 1325
3 Units Weitex Toledo Wt. Scale - S/N 6844, 11444, & 18058 respectively
1 Unit Air Compressor, Quincy, Color Blue
100 Gasul Cylinders
20 Shellane Cylinders
15 Caltex Cylinders
1 Spare Tire 7.50 x 15 for Mitsubishi Canter PN # AHF968[28]

Lising also filed with the RTC-La Trinidad Motions[29] for Temporary Custody of the Seized Items alleging that the seized items were flammable, combustible and hazardous by nature, and the RTC and/or NBI-CAR were incapable of storing them.

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[27] Records, Vol. I, p. 69.

[28] Records, Vol. II, p. 57.

[29] Records, Vol. I, pp. 62-63; Vol. II, pp. 49-50.

On May 23, 2005, the RTC-La Trinidad granted[30] Lising's Motions and ordered that the seized items be stored at the warehouse of Asephil Manufacturing Corporation in Antipolo deputizing the NBI-CAR to be responsible for its custody. It noted that such items shall remain in *custodia legis* subject to the control of the RTC-La Trinidad.

Thereafter, Benguet Gas and its owners, and respondents respectively moved for the quashal of the SWs against them.[31]

According to Benguet Gas and its owners, there existed no probable cause for the issuance of SWs against them; such SWs failed to describe with particularity the place to be searched and the items to be seized; and the transfer of the seized items to another place will cause their deterioration resulting to business losses and inconvenience.

Meanwhile, respondents argued that the offenses imputed against them were committed outside the RTC-La Trinidad's territorial jurisdiction, and there is no showing of any compelling reason that would warrant the issuance of SWs against them. They further contended that the SWs were not supported by probable cause and that they failed to describe with particularity the place to be searched and the items to be seized.

On December 29, 2005, the RTC-La Trinidad granted the respective Motions to Quash SWs filed by Benguet Gas and its owners, and by respondents.

Lising and private complainants appealed.

On April 16, 2012, the CA partially granted the consolidated appeal, the dispositive portion of its Decision reads:

> WHEREFORE, in view of the foregoing premises, the consolidated appeal is PARTIALLY GRANTED, thus:
>
> 1. We hereby REVERSE and SET ASIDE the Resolution dated 29 December 2005 of the Regional Trial Court of La Trinidad, Benguet,

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[30] Records, Vol. I, pp. 73-74; Vol. II, pp. 60-61.

[31] Records, Vol. I, pp. 77-82; Vol. II, pp. 70-94.

Branch 8 granting the Motion to Quash Search Warrant Nos. 05-70 and 05-71 and its Order dated 22 March 2006 denying complainants-appellants' Motion for Reconsideration. Accordingly, Search Warrant Nos. 05-70 and 05-71 are hereby REINSTATED.

2. We AFFIRM the Resolution dated 29 December 2005 of the Regional Trial Court of La Trinidad, Benguet, Branch 8 granting the Motion to Quash Search Warrant Nos. 05-72 and 05-73 and its Order dated 30 March 2006 denying complainants-appellants' Motion for Reconsideration. Complainants-appellants are hereby ordered to return to respondents-appellees Elena Lao, Imelda Lao, Pompidou Golangco, Jeremy Wilson Golangco, Carmen Castillo and/or occupants of Baguio Gas Corporation the items and equipment seized under Search Warrant Nos. 05-72 and 05-73.

No costs.

SO ORDERED.[32]

The CA held that considering that the RTC-La Trinidad initially ordered the issuance of SWs against Benguet Gas and its owners, then there is probable cause, or such good and sufficient reason to believe that violation of BP 33 had been committed in the place sought to be searched. It added that it is rather unusual for the court to later on claim that its searching questions on Lising and his witness were not exhaustive enough. It also declared that the items to be seized were sufficiently described as circumstances would allow and the SWs were issued in relation to specific offenses indicated in each warrant.

However, the CA was unconvinced that there was any compelling reason for RTC-La Trinidad to issue SWs against respondents as Baguio Gas is located outside its jurisdiction, Echoing the RTC-La Trinidad's quashal of SWs against respondents, the CA noted that Lising received Atty. Adarlo's complaint on March 1, 2005; the test-buy was conducted on April 1, 2005; and the SW applications were filed on May 19, 2005. It held that these circumstances disproved that there was any urgency on the SW applications against respondents. It added that the supposed influence of Baguio Gas in Baguio

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[32] CA *rollo*, Vol. II, pp. 342-343.

City is inconsequential as the SW applicants themselves admitted that Baguio Gas is influential not only in Baguio City but in the whole of Benguet Province.

On December 12, 2012, the CA denied Lising and private complainants' Motion for Partial Reconsideration.

**Issue**

Hence, Petron Gasul LPG Dealers Association and Totalgaz LPG Dealers Association (petitioners) filed this Petition raising the sole ground as follows:

THE, COURT OF APPEALS MADE A DECISION NOT IN ACCORD WITH THE 2000 RULES ON CRIMINAL PROCEDURE x x x AND THE APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT RULED THAT THERE ARE NO 'COMPELLING REASONS' TO JUSTIFY THE APPLICABLITY OF SECTION 2 (B) OF RULE 126 OF THE RULES.[33]

***Petitioners' Arguments***

Petitioners concede that Baguio Gas is outside the territorial jurisdiction of the RTC-La Trinidad; however, they maintain that there are compelling reasons that will justify the issuance of SWs against respondents. They also stress that even after the test-buy or from the third week of April 2005 until the second week of May 2005, the NBI-CAR conducted additional surveillance and investigation to validate their April 1, 2005 test-buy operation on respondents. They argue that after the completion of the gathering of the evidence, the NBI-CAR was pressed for time to file the SW applications and to enforce the SWs against respondents.

Petitioners further claim that the immediate hearing on and issuance of SWs were precautions taken since the possibility of information leakage to Baguio Gas is foreseeable and imminent because of its influence and pervasive connections in Baguio City and the entire Benguet Province.

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[33] *Rollo*, p. 51.

***Respondents' Arguments***

For their part, respondents counter that there is no valid justification why the SW applications against them were filed before RTC-La Trinidad and not in Baguio City. They also argue that during the hearing, Lising failed to prove that respondents' wealth and influence fall within the "compelling reasons," which would support such issuance of SWs.

In addition, respondents state that contrary to Lising's position, the seized items are bulky and may not be easily moved or sold briskly. They also aver that the seized items are not illegal by themselves but are equipment necessary for the conduct of respondents' business. They likewise allege that the possible information leakage was not shown to factually exist.

Finally, respondents reiterate that considering the length of time between the test-buy and the SW applications, there appears no urgency of time as would amount to compelling reason for the issuance of SW against them.

**Our Ruling**

The Court grants the Petition.

A search warrant (SW) is defined as a written order issued in the name of the People of the Philippines, signed by a judge, and directed to a peace officer commanding him to search for the personal property described therein and bring it to the court.[34]

In *Malaloan v. Court of Appeals*,[35] the Court held that the requisites, procedure and purpose for SW issuance are totally different from those of a criminal action. It stressed that the application for and issuance of a SW is not a criminal action but a judicial process, more particularly, a special criminal

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[34] RULES OF COURT, Rule 126

Section 1. *Search warrant defined*. — A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court. (1)

[35] G.R. No. 104879, May 6, 1994, 232 SCRA 249, 356-257, 261.

process designed to respond to an incident in the main case, if one has been instituted, or in anticipation thereof. The power to issue SW is inherent in all courts, such that the power of courts to issue SWs where the place to be searched is within their jurisdiction is not intended to exclude other courts from exercising the same power.

In addition, SW shall be issued only upon probable cause personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.[36] In turn, probable cause for SW refers to such "facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched."[37]

In its separate Orders dated May 19, 2005, the RTC-La Trinidad found probable cause in the SW applications after conducting a hearing in relation thereto, hence it granted the applications. In these Orders, the RTC-La Trinidad expressly declared that there are sufficient reasons to believe that the alleged offenses were committed and that respondents were in possession of the subject personal properties.[38] Similarly, the CA found that there is probable cause for the SWs when it sustained the SWs against Benguet Gas. Worth noting is that it only affirmed the quashal of the SWs against respondents on the ground that they were defective for the supposed failure to establish compelling reasons supporting the SW applications

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[36] Section 2, Article III, 1987 Philippine Constitution

Section 2. x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[37] *Yao, Sr. v. People*, 552 Phil. 195, 212 (2007).

[38] Records, Vol. II, pp. 45-48.

in a court not having jurisdiction over the place where a crime was committed.[39]

Hence, there is no dispute that in this case, both the RTC-La Trinidad and the CA found that there exists probable cause that respondents had committed an offense and that the objects used in committing the offense are in the place to be searched. Consequently, the only issue for resolution is whether there is any compelling reason warranting the RTC-La Trinidad's issuance of SW on respondents, whose business presence is in Baguio City, not in La Trinidad.

In this regard, Section 2 of Rule 126 of the Rules of Court provides for the proper court where an SW application shall be filed, to wit:

> Section 2. *Court where application for search warrant shall be filed*. — An application tor search warrant shall be filed with the following:
>
> a) Any court within whose territorial jurisdiction a crime was committed.
>
> b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.
>
> x x x x x x x x x

The foregoing provision is clear. Generally, the SW application must be filed with the court which has territorial jurisdiction over the place where the offense was alleged to be committed. This, however, is not an iron-clad rule. For compelling reasons, which must be expressly stated in the application, an SW application may be filed in a court other than the one having jurisdiction over the place where the purported offense was committed and where the SW shall be enforced.[40]

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[39] CA *rollo*, Vol. II, p. 339.

[40] *Pilipinas Shell Petroleum Corporation v. Romars International Gases Corporation*, G.R. No. 189669, February 16, 2015, 750 SCRA 547, 554-555.

In this case, Lising cited the foregoing compelling reasons on why the two separate SW applications against respondents were filed with the RTC-La Trinidad instead in RTC-Baguio City, to wit:

4.1. The 'compelling reasons of urgency, subject, time and place' in the instant application[s] are:

(a) Time is absolutely of the essence in the case.

As attested to by [Lising] and his witness [Fortea] in their attached affidavits, the volume of the LPG cylinders being illegally refilled by the respondents reflects the capacity of respondents' facilities to perpetrate their unauthorized and illegal acts. Respondents' continued and unhampered acts of illegally trading LPG products, in violation of Section 2 (a), in relation to Sections 3 (c) and 4, of BP 33, as amended; [and of underdelivery or underfilling of LPG products or possession of underfilled LPG cylinders for the purpose of sale, distribution, transportation, exchange or barter, in violation of Section 2 (c), in relation to Section 4, of BP 33, as amended[,] will result in the unabated and unhampered endangerment of consumers, deprivation of business from the legitimate LPG industry players, and denial of payment of proper taxes to the government.

(b) The brisk sales of the subject LPG cylinders might result in the depletion of available stocks, leaving nothing to be seized in case a search warrant be issued but on a later date.

(c) The immediate hearing on and issuance of the search warrant applied for are precautions against possible leakage of information to respondents.[41]

We find that the above-cited portions of the SW applications satisfactorily comply with the required statement of compelling reasons on why they were filed in RTC-La Trinidad and not in a court in Baguio City, Nonetheless, in quashing the SWs against respondents, the RTC-La Trinidad, ruled that these stated reasons in the applications were not compelling because:

x x x There is no urgency of time as the affidavit of the applicant states that his office received the letter-complaint of the lawyers of

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[41] Records, Vol. II, pp. 2-3, 14-15.

LPG Dealers Association on March 1, 2005. They conducted surveillance on the property of the respondents from that time on until they conducted a test-buy on April 1, 2005, Yet it was only on May 19, 2005 that they applied for a search warrant. Where now is the urgency of time when the search warrant was filed more than two months after the applicant received the letter-complaint?[42]

We do not agree with the pronouncement of the RTC-La Trinidad for the following reasons:

First, in his Affidavit attached to the SW applications, Lising explicitly stated that after the April 1, 2005 test-buy, additional surveillance and investigation were made on respondents, *viz.*:

12. To further validate the aforementioned illegal activities, the NBI-CAR conducted **additional surveillances and investigations from the third week of April 2005 to the second week of May 2005**. As expected, the illegal trading and underfilling [activities] of Baguio Gas remained unhampered. A copy of the photograph of Baguio Gas taken during the additional surveillance and investigation is hereto attached. x x x

13. After the conduct of the numerous surveillance and investigation proceedings, and taking into consideration all the evidence at hand, I have every reasonable ground to believe that Baguio Gas is indeed engaged in the illegal trading of LPG products, in violation of BP 33, as amended.[43] (Emphasis supplied)

Second, the searching questions and answers thereto show that Lising, and his witness (Fortea) explained the gap between the test-buy made on April 1, 2005 and the filing of the SW applications on May 19, 2005. They testified that after the test-buy, further surveillance and investigation were conducted against persons and/or entities suspected to be engaged in the illegal trade and underfilling of LPG products, and/or possession of underfilled LPG cylinders. Lising declared that:

Q- So all of these - from what I gather, all of these transactions were conducted in one day?

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[42] *Id*. at 208.

[43] *Id*. at 8-9, 20-21.

A- Yes, your honor. April 1, your honor, but **we conducted surveillance on different dates before April 1 and after April 1**.

Q- And were they still selling prior [to] and after your own transactions?
A- Yes, your honor.

Q- And usually, are there a lot of customers [y]ou see [there] in all of these?
A- Yes, your honor.[44] (Emphasis supplied)

Fortea corroborated Lising's testimony in this manner:

Q- So you said that you helped in the surveillance. When was the surveillance conducted?
A- **First week of March, third week of April and second week of May, your honor.**

Q- But you made your purchase April 1st 2005?
A- Yes, your honor.[45] (Emphasis supplied)

As properly argued by petitioners, the urgency of time here refers to urgency to secure and enforce the SWs against respondents, Credence should thus be given to the fact that, as above discussed, immediately after the gathering and completion of evidence, NBI-CAR operatives were pressed for time to file the SW applications.

To reiterate, both Lising and Fortea pointed out that further surveillance and investigation were conducted even after the test-buy; as such, the RTC-La Trinidad and the CA erred in using April 1, 2005 as the reckoning point to determine the urgency of the SW issuance. This is because from April 1, 2005 up to second week of May 2005 the evidence was still being gathered, assessed and completed, and after which, the filing of the SW applications were immediately made on May 19, 2005.

The period of time between the test-buy and the filing of the applications does not by itself negate the strength of the applicant's

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[44] TSN, May 19, 2005, p. 10.

[45] *Id*. at 11.

allegations or his testimony, including that of his witness. It even strengthens the case as it shows that thorough investigations were first made so that the applications would not just be filed hastily without first obtaining sufficient evidence in support of the probable cause necessary for the issuance of SWs.

Third, in issuing SW, the court must consider the subject, the time and the place of its enforcement. When the RTC-La Trinidad initially granted SWs applications against respondents, the same was based on its sound judicial discretion, taking into consideration that there are indeed compelling reasons which convinced it that SWs must be issued even if the place where they shall be enforced is outside of its jurisdiction.[46]

In *People v. Chlu*,[47] the Court sustained the issuance of SW against therein appellant even if the SW was issued by RTC-Pasay, and not RTC-Quezon City, which has jurisdiction over the place where the SW would be enforced. Among the compelling reasons enumerated therein were the possibility of appellant's removal of the subject items therein, and the possibility that SW application may come to the knowledge of appellant and his co-accused rendering its enforcement a useless effort.

The foregoing reasons, aside from the above-discussed urgency of time, were also cited as compelling reasons in this case. The Court reiterates that RTC-La Trinidad took cognizance of and initially granted the SWs against respondents based on its determination of probable cause as well as its finding of compelling reasons in the applications. To our mind, to later on quash the SWs on the ground that the applicant failed to prove compelling reasons is a mere afterthought and cannot defeat its initial finding that that there are indeed good and sufficient justifications for the SWs against respondents.

Simply put, to quash SW Nos. 05-72 and 05-73 against respondents on a belated view that no compelling reason was established, is to disregard established facts, which facts include

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[46] *People v. Chiu*, 468 Phil. 183, 198 (2004).

[47] *Id*. at 198-199.

— the required statement of compelling reasons in the applications; Lising's Affidavit and the searching questions and answers supporting this statement; and, the RTC-La Trinidad's own finding of probable cause and compelling reasons in its initial grant of SWs against respondents. When it reversed itself, the RTC-La Trinidad ignored clear dictates of reason;[48] therefore, its quashal of the SWs against respondents cannot be sustained.

Given these, the CA erred in affirming the RTC-La Trinidad Orders granting the Motion to Quash SW Nos. 05-72 and 05-73 against respondents.

**WHEREFORE,** the Petition is **GRANTED**. The April 16, 2012 Decision and December 12, 2012 Resolution of the Court of Appeals in CA-G.R. CV Nos. 88723 and 89313 are **REVERSED** and **SET ASIDE** insofar as they affirmed the December 29, 2005 Resolution and March 30, 2006 Order of the Regional Trial Court, La Trinidad, Branch 8 granting the Motion to Quash Search Warrant Nos. 05-72 and 05-73 against Elena Lao, Imelda Lao, Pompidou Golangco, Jeremy Wilson Golangco, Carmen Castillo and/or occupants of Baguio Gas Corporation. Accordingly, Search Warrant Nos. 05-72 and 05-73 are **REINSTATED**.

**SO ORDERED.**

*Carpio (Chairperson)* and *Leonen, JJ.,* concur.

*Brion, J.,* on leave.

*Mendoza, J.,* on official leave.

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[48] See *Yao, Sr. v. People, supra* note 37 at 218.

**THIRD DIVISION**

[G.R. No. 210715. July 18, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **RUSTICO YGOT *y* REPUELA,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In order to secure a conviction for illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.

2. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL AND FRAME-UP; FAILS AS AGAINST POSITIVE TESTIMONIES.—** Accused-appellant's defenses which are anchored mainly on bare denial and frame-up cannot be given credence. They do not have more evidentiary weight than the positive assertions of the prosecution witnesses. His defenses are unavailing considering that he was caught *in flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.

3. **ID.; ID.; MOTIVE; REGULAR PERFORMANCE OF OFFICIAL DUTIES UPHELD IN THE ABSENCE OF ILL-MOTIVE TO FALSELY TESTIFY AGAINST ACCUSED.—** Settled is the rule that the absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit. When

the police officers involved in the buy-bust operation have no motive to testify against the accused, the courts shall uphold the presumption that they performed their duties regularly. In fact, for as long as the identity of the accused and his participation in the commission of the crime has been duly established, motive is immaterial for conviction.

4. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); CHAIN OF CUSTODY RULE; CERTIFICATE OF INVENTORY OF SEIZED ITEMS DULY SIGNED IS SUFFICIENT.—** In the case before us, the Certificate of Inventory of items which was duly signed by a media representative, a Department of Justice (DOJ) representative, an elected *barangay* official, as well as accused-appellant himself, clearly reflected that the *shabu* was contained in two heat-sealed transparent plastic sachets. Moreover, there is no need for the informant to identify the *shabu* since it has already been sufficiently and convincingly identified through the testimonies of other prosecution witnesses. After all, the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative.

5. **ID.; ID.; ID.; PERIOD OF SIXTEEN (16) HOURS FROM THE SEIZURE OF THE ALLEGED DANGEROUS DRUGS TO ITS SUBMISSION TO THE PROVINCIAL CRIME LABORATORY IS NOT UNREASONABLE.—** Contrary to the contention of accused-appellant, we find the period of approximately sixteen (16) hours from the seizure of the alleged dangerous drugs to its submission to the provincial crime laboratory not unreasonable. As admitted by accused-appellant in his Brief, the inventory of the items took place in the evening of 18 May 2010 and the seized items were forwarded to the crime laboratory only in the morning of the following day. We find the failure to make the delivery of the seized items on the same day still tenable under the circumstances. In fact, we note that such time is still within the twenty-four (24) hour period required by law within which to deliver the confiscated items to the crime laboratory for examination.

6. **ID.; ID.; ID.; SUBSTANTIAL COMPLIANCE WITH THE LEGAL REQUIREMENTS ON THE HANDLING OF THE SEIZED ITEM IS SUFFICIENT.—** The procedure to be

followed in the custody and handling of the seized dangerous drugs is outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165 x x x [N]on-compliance with the requirements of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case. It does not necessarily render the arrest of the accused illegal or the items seized and confiscated from him inadmissible in evidence. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient. Simply put, mere lapses in procedure need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been properly preserved and safeguarded. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.

7. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PENALTY.—** The RTC sentenced accused-appellant to suffer the penalty of life imprisonment and pay a fine of ₱500,000.00. x x x We sustain the penalty imposed on accused-appellant as it is in conformity with the law.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*RV Cabatcan Law Office* for accused-appellant.

**D E C I S I O N**

**PEREZ, *J*.:**

For this Court's resolution is the appeal of Rustico Ygot *y* Repuela (accused-appellant) assailing the 25 July 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR HC No. 01416. The CA Decision affirmed the ruling of the Regional

[1] *Rollo*, pp. 3-14; Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla concurring.

Trial Court (RTC), Branch 47, Tagbilaran City finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

**Background of the Case**

Accused-appellant was charged before the RTC with violation of Section 5, Article II of R.A. No. 9165. Upon arraignment, accused-appellant, with the assistance of counsel, pleaded not guilty to the crime charged. Pre-trial and trial on the merits thereafter ensued.

On 17 November 2011, the RTC promulgated a Decision[2] finding accused-appellant guilty beyond reasonable doubt. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The RTC ruled that the evidence presented by the prosecution successfully established the elements of illegal sale of dangerous drugs as accused-appellant was caught *in flagrante delicto* in a valid buy-bust operation. It held that the accused-appellant's defenses of denial and frame-up lack persuasive force as these defenses are one of those standard, worn-out and impotent excuses of malefactors in the course of the prosecution of drug cases.[3] The RTC noted that in the absence of any intent or ill-motive on the part of the police officers to falsely impute commission of a crime against the accused, the presumption of regularity in the performance of official duty is entitled to great respect and deserves to prevail over the bare, uncorroborated denial and self-serving claim of the accused of frame-up.[4]

On intermediate appellate review, the CA found no reason to disturb the findings of the RTC and thus, upheld its ruling. The appellate court likewise rejected the defense of frame-up insisted by the accused-appellant. The CA held that the apprehending officers complied with the proper procedure in

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[2] Records, pp. 109-115.

[3] *Id.* at 114.

[4] *Id.*

the custody and disposition of the seized drugs and that the identity of the confiscated drugs has been duly preserved. It maintained that the chain of custody over the two (2) heat-sealed plastic sachets of *shabu* was not broken. It averred that if there were lapses at all in the compliance with the required procedure, the same were only minor details which did not, in any way, affect the integrity of the evidence.

On 30 August 2013, accused-appellant filed his notice of appeal pursuant to Section 13, par. C, Rule 124 of the Rules of Court to assail the 25 July 2013 Decision of the CA.

**Issue**

Whether the lower courts erred in convicting accused-appellant despite the prosecution's failure to establish the chain of custody.[5]

**Our Ruling**

The conviction of accused-appellant stands.

**The elements of illegal sale of dangerous drugs were established.**

In order to secure a conviction for illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[6]

Our examination of the records revealed that the prosecution was able to convincingly establish all the afore-cited elements.

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[5] CA *rollo*, p. 16; Brief for the Accused-Appellant.

[6] *People v. Midenilla*, 645 Phil. 387, 601 (2010) citing *People v. Guiara*, 616 Phil. 290, 302 (2009) further citing *People v. Gonzales*, 430 Phil. 504, 513 (2002); *People v. Bongalon,* 425 Phil. 96, 117 (2002).

The witness for the prosecution, Intelligence Officer 1 Ricardo Palapar (IO1 Palapar), positively identified accused-appellant as the person who sold *shabu* to the confidential informant. He testified that he saw the confidential informant giving the buy-bust money to accused-appellant and in return, accused-appellant handed to the confidential informant two (2) plastic sachets believed to contain *shabu*.[7] The prosecution also established through testimony and evidence the object of the sale, which consisted of two (2) heat-sealed transparent plastic sachets containing *shabu* and the two (2) marked Php500.00 bills, as the consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by prosecution witness IO1 Palapar.

Accused-appellant denied the accusation that he sold *shabu* to a confidential informant. He maintained that he just had lunch with a friend at Bohol Quality Mall when two policemen arrived and accosted him. He claimed that he was brought to the Philippine Drug Enforcement Agency (PDEA) office and there, the police officers frisked him and kept on asking where he hid the *shabu*. When he replied that he did not know what they were talking about and that he did not possess any of that substance, the policemen allegedly forced him to sign a document which he did not understand.

Accused-appellant's defenses which are anchored mainly on bare denial and frame-up cannot be given credence. They do not have more evidentiary weight than the positive assertions of the prosecution witnesses. His defenses are unavailing considering that he was caught *in flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.[8]

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[7] TSN, 9 September 2010, p. 22.

[8] *People v. Hernandez*, 607 Phil. 617, 635 (2009).

We agree with the lower courts that the culpability of accused-appellant was established beyond reasonable doubt. The testimony of IO1 Palapar was not only unwavering but consistent even under cross-examination. Moreover, the defense failed to impeach IO1 Palapar or present controverting evidence to show why he would incriminate or testify against accused-appellant. Settled is the rule that the absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit.[9] When the police officers involved in the buy-bust operation have no motive to testify against the accused, the courts shall uphold the presumption that they performed their duties regularly.[10] In fact, for as long as the identity of the accused and his participation in the commission of the crime has been duly established, motive is immaterial for conviction.

**Chain of Custody Rule**

Accused-appellant submits that the lower courts failed to consider the procedural flaws committed by the arresting officers in the safekeeping of the seized drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.[11] He claims that the prosecution erred in not presenting the confidential informant who appears to be the first person in possession of the items; and the other persons who received the items prior to its forensic examination. Relying on the ruling of this Court in *People v. Habana*,[12] accused-appellant maintains that:

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[9] *People v. Estares*, 347 Phil. 202, 213 (1997).

[10] *People v. Lim*, 615 Phil. 769, 782 (2009).

[11] As amended by R.A. No. 10640, 14 July 2014. (1) The apprehending team having initial custody and control of the drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof[.]

[12] 628 Phil. 334 (2010).

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care.[13]

We are not persuaded. The case cited by accused-appellant is not in all fours with the instant case. In the *Habana* case, the Court emphasized the need for everyone who took possession of the items to testify because the seized items were not properly placed in a container. In the case before us, the Certificate of Inventory of items which was duly signed by a media representative, a Department of Justice (DOJ) representative, an elected *barangay* official, as well as accused-appellant himself, clearly reflected that the *shabu* was contained in two heat-sealed transparent plastic sachets. Moreover, there is no need for the informant to identify the *shabu* since it has already been sufficiently and convincingly identified through the testimonies of other prosecution witnesses. After all, the presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative.[14] There was also no need for Police Officer 1 (PO1) Telan, the person who received the confiscated specimen at the Bohol Provincial Crime Laboratory, to testify at the trial because the fact of his possession of the seized items had already been duly testified to by Police Chief Inspector Pinky Sayson Acog (PCI Acog), the person who eventually received the items and conducted the examination of the specimen submitted.

Contrary to the contention of accused-appellant, we find the period of approximately sixteen (16) hours from the seizure of the alleged dangerous drugs to its submission to the provincial crime laboratory not unreasonable. As admitted by accused-appellant in his Brief, the inventory of the items took place in

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[13] *Id.* at 342.

[14] *People v. Valdez*, 363 Phil. 481, 493 (1999).

the evening of 18 May 2010 and the seized items were forwarded to the crime laboratory only in the morning of the following day. We find the failure to make the delivery of the seized items on the same day still tenable under the circumstances. In fact, we note that such time is still within the twenty-four (24) hour[15] period required by law within which to deliver the confiscated items to the crime laboratory for examination. As regards the whereabouts of the seized items prior to their presentation in court, it is clear from Chemistry Report No. D-68-2010[16] that these were in the custody of the Bohol Provincial Crime Laboratory during the said period.

The procedure to be followed in the custody and handling of the seized dangerous drugs is outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

> (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**

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[15] Sec. 21 (b) of the Implementing Rules and Regulations of R.A. 9165 states:

Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for qualitative and quantitative examination.

[16] Index of Exhibits; Exhibit "B".

**and invalid such seizures of and custody over said items[.]** (Emphasis supplied)

It is evident from the aforecited provision that non-compliance with the requirements of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case. It does not necessarily render the arrest of the accused illegal or the items seized and confiscated from him inadmissible in evidence. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient.[17] Simply put, mere lapses in procedures need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been properly preserved and safeguarded.[18] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[19] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 were not faithfully observed, the guilt of the accused will not be affected.[20]

We find no broken links in the chain of custody over the seized drugs. Records reveal that upon seeing the accused-

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[17] *People v. Cortez*, 611 Phil. 360, 381 (2009).

[18] *People v. Domado*, 635 Phil. 74, 87 (2010).

[19] *People v. Magundayao*, 683 Phil. 295, 321 (2012); *People v. Le*, 636 Phil. 586, 598 (2010) citing *People v. De Leon,* 636 Phil. 586, 598 (2010) further citing *People v. Naquita*, 582 Phil. 422, 442 (2008); *People v. Concepcion*, 578 Phil. 957, 971 (2008).

[20] *People v. Manlangit*, 654 Phil. 427, 440-442 (2011) citing *People v. Rosialda*, 643 Phil. 712, 726-727 further citing *People v. Rivera*, 590 Phil. 894, 912-913 (2008).

appellant hand-over to the confidential informant the two heat-sealed transparent plastic sachets believed to contain *shabu*, IO1 Palapar gave the pre-arranged signal to the back-up team by removing his sunglasses. As agreed upon, the team immediately closed in to effect an arrest.

IO1 Palapar held the accused-appellant and introduced himself as a PDEA agent. Police Officer 3 Herold Bihag (PO3 Bihag), one of the members of the entrapment team, placed accused-appellant under arrest and apprised him of his constitutional rights. Recovered from accused-appellant were the two (2) marked ₱500.00 bills and one (1) unit of NOKIA cellphone. The confidential informant, on the other hand, turned over to PO1 Palapar the two (2) plastic sachets containing white crystalline substance.[21]

Accused-appellant was thereafter brought to the PDEA office for processing and further investigation. While thereat, the two heat-sealed plastic sachets containing white crystalline substance were marked by IO1 Palapar with "SS-RRY1-051810" and "SS-RRY2 051810."[22] IO1 Palapar explained that "SS" meant subject of the sale, "RRY" represented the initials of accused-appellant Rustico Repuela Ygot, and "051810" referred to the date of confiscation.[23] A Certificate of Inventory of the confiscated items was prepared and thereafter signed by *Barangay Kagawad* Ramon Duroy, Department of Justice (DOJ) representative Zacharias Castro, Station DYRD representative Cecilio Flores and accused-appellant.[24]

IO1 Palapar thereafter prepared a letter-request[25] addressed to the Bohol Provincial Crime Laboratory to have the contents of the plastic sachets examined for presence of illegal drugs.

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[21] TSN, 9 September 2010, pp. 11-12.

[22] *Id.* at 13-15.

[23] *Id.*

[24] *Id.* at 16.

[25] Index of Exhibits, Exhibit "A" and submarkings.

The following morning, IO1 Palapar delivered the confiscated specimens with the letter-request to the crime laboratory and the same were duly received by PO1 Telan, RM.[26] PO1 Telan then turned over the letter-request with the subject specimens to PCI Acog, the Forensic Chemist of Bohol Provincial Crime Laboratory.

PCI Acog performed qualitative examination on the contents of the plastic sachets. The examination yielded positive results for the presence of methamphetamine hydrochloride or *shabu* as evidenced by Chemistry Report No. D-68-2010.[27]

It is clear from the foregoing that the substance marked, tested and offered in evidence were the same items handed over by accused-appellant to the confidential informant. We have previously ruled that as long as the state can show by record or testimony that the integrity of the evidence has not been compromised by accounting for the continuous whereabouts of the object evidence at least between the time it came into the possession of the police officers until it was tested in the laboratory, then the prosecution can maintain that it was able to prove the guilt of the accused beyond reasonable doubt.[28]

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[29] Accused-appellant in this case failed to convince the Court that there was ill motive on the part of the arresting officers.

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[26] *Id.*; Exhibit "A-1".

[27] *Id.*; Exhibit "B" and sub-markings.

[28] *Malilin v. People*, 576 Phil. 576, 588 (2008) citing *Graham v. State*, 255 NE2d 652, 655.

[29] *People v. Miranda*, 560 Phil. 795, 810 (2007).

**Correct penalty imposed**

The RTC sentenced accused-appellant to suffer the penalty of life imprisonment and pay a fine of ₱500,000.00. The CA affirmed the penalty imposed by the RTC.

Section 5 of R.A. No. 9165 provides the penalty for the illegal sale of dangerous drugs, *viz.*:

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.

We sustain the penalty imposed on accused-appellant as it is in conformity with the above-quoted provision of the law.

**WHEREFORE,** the appeal is **DISMISSED** and the Decision dated 25 July 2013 of the Court of Appeals in CA-G.R. CEB-CR HC No. 01416 is hereby **AFFIRMED**.

**SO ORDERED.**

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

*Mendoza,*[*] *J.,* on wellness leave.

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[*] Additional Member per Raffle dated 18 May 2016. (On Wellness Leave).

**FIRST DIVISION**

[G.R. No. 210801. July 18, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ALVIN CENIDO *y* PICONES and REMEDIOS CONTRERAS *y* CRUZ,** *accused-appellants.*

**SYLLABUS**

**CRIMINAL LAW; REVISED PENAL CODE; HOW CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED; DEATH OF THE ACCUSED PENDING APPEAL OF CONVICTION EXTINGUISHES THE CRIMINAL LIABILITY AND THE CIVIL LIABILITY *EX DELICTO*.—** On July 7, 2014, x x x Remedios Contreras *y* Cruz [was found] guilty beyond reasonable doubt of Illegal Sale and Possession of Prohibited Drugs. x x x Remedios, [however, died on] March 7, 2014. x x x As Remedios's death transpired before the promulgation of the Court's July 7, 2014 Resolution in this case, *i.e.*, when her appeal before the Court was still pending resolution, her criminal liability is totally extinguished in view of the provisions of Article 89 of the Revised Penal Code which states: Art. 89. *How criminal liability is totally extinguished*. — Criminal liability is totally extinguished: 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment; x x x In *People v. Amistoso*, the Court explained that the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as his civil liability *ex delicto*. Consequently, Remedios's death on March 7, 2014 renders the Court's July 7, 2014 Resolution irrelevant and ineffectual as to her, and is therefore set aside. Accordingly, the criminal case against Remedios is dismissed.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellants.

## RESOLUTION

**PERLAS-BERNABE, *J.*:**

On July 7, 2014, the Court rendered its Resolution[1] (July 7, 2014 Resolution) in this case finding accused-appellants Alvin Cenido *y* Picones and Remedios Contreras *y* Cruz (Remedios; collectively, accused-appellants) guilty beyond reasonable doubt of Illegal Sale and Possession of Prohibited Drugs, the dispositive portion of which reads:

> **WHEREFORE**, the Court **ADOPTS** the findings of fact and conclusions of law in the July 31, 2013 Decision of the [Court of Appeals] in CA-G.R. CR-H.C. No. 05333 and **AFFIRMS** said Decision finding accused-appellants Alvin Cenido *y* Picones and Remedios Contreras *y* Cruz **GUILTY** beyond reasonable doubt of Illegal Sale and Possession of Prohibited Drugs, respectively, sentencing: *(a)* Alvin Cenido *y* Picones to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00 for violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002[";] and *(b)* Remedios Contreras *y* Cruz to suffer the indeterminate penalty of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of ₱300,000.00 for violation of Section 11, Article II of the same Act.
>
> **SO ORDERED**.[2]

On August 12, 2014, accused-appellants jointly moved for reconsideration[3] thereof, which the Court denied with finality in its Resolution[4] dated December 1, 2014.

Meanwhile, on April 11, 2014, the Court received a Letter[5] dated April 10, 2014 from the Correctional Institution for Women

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[1] *Rollo*, pp. 42-43. Signed by Division Clerk of Court Ma. Lourdes C. Perfecto.

[2] *Id.* at 42.

[3] Dated August 12, 2014. *Id.* at 44-47.

[4] *Id.* at 51. Signed by Division Clerk of Court Edgar O. Aricheta.

[5] *Id.* at 19A. Said Letter was noted by the Court in its Resolution dated June 9, 2014; *id.* at 40A.

informing the Court of the death of one of the accused-appellants in this case, Remedios, on March 7, 2014.[6] In a Resolution[7] dated September 9, 2015, the Court required the Superintendent of the Correctional Institution for Women to furnish the Court with a certified true copy of Remedios's death certificate and, in compliance thereto, the same was submitted by Officer-In-Charge Elsa Aquino-Alabado on February 11, 2016.[8] As Remedios's death transpired before the promulgation of the Court's July 7, 2014 Resolution in this case, *i.e.*, when her appeal before the Court was still pending resolution, her criminal liability is totally extinguished in view of the provisions of Article 89 of the Revised Penal Code which states:

> Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:
>
> 1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;
>
> x x x x x x x x x

In *People v. Amistoso*,[9] the Court explained that the death of the accused pending appeal of his conviction extinguishes his criminal liability as well as his civil liability *ex delicto*.[10] Consequently, Remedios's death on March 7, 2014 renders the Court's July 7, 2014 Resolution irrelevant and ineffectual as to her, and is therefore set aside. Accordingly, the criminal case against Remedios is dismissed.

**WHEREFORE,** insofar as accused-appellant Remedios Contreras *y* Cruz is concerned, the Resolutions dated July 7, 2014 and December 1, 2014 of the Court are hereby **SET ASIDE**

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[6] See Certificate of Death; *id.* at 57.

[7] *Id.* at 54.

[8] See Letter dated February 9, 2016 with the attached copy of the Certificate of Death of Remedios; *id.* at 56-57.

[9] 716 Phil. 825 (2013).

[10] *Id.* at 830.

and Criminal Case Nos. 10-037 and 10-038 before the Regional Trial Court of Binangonan, Rizal are **DISMISSED**, in view of her demise.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

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**EN BANC**

[A.C. No. 6387. July 19, 2016]
(Formerly CBD Case No. 11-3001)

**GABINO V. TOLENTINO and FLORDELIZA C. TOLENTINO,** *complainants, vs.* **ATTY. HENRY B. SO and ATTY. FERDINAND L. ANCHETA,** *respondents.*

**SYLLABUS**

1. **LEGAL ETHICS; NEGLIGENCE IN THE PERFORMANCE OF DUTIES AS COUNSEL; GOVERNMENT EMPLOYED COUNSEL HANDLING APPEALED CASE WHO RESIGNED FOUR YEARS BEFORE THE COURT OF APPEALS RENDERED ITS DECISION CANNOT BE FAULTED FOR NOT ELEVATING CASE TO THE SUPREME COURT.—** Complainants fault Atty. So for failing to inform them about the Court of Appeals Decision and for not taking the necessary steps to elevate their case to this Court. However, it is undisputed that Atty. So was no longer employed at the Bureau of Agrarian Legal Assistance when the Court of Appeals Decision was rendered on July 16, 2001. Atty. So had resigned in 1997, four (4) years before the Decision was promulgated. Atty. So handled the appeal of complainant Flordeliza in his capacity as a government-employed legal officer of the Bureau of Agrarian Legal Assistance of the Department

of Agrarian Reform. x x x Atty. So's appearance for complainant Flordeliza may be likened to that of a lawyer assigned to handle a case for a private law firm's client. If the counsel resigns, the firm is simply bound to provide a replacement. Similarly, upon Atty. So's resignation, the Director of the Bureau merely reassigned his case assignment to other lawyers in the Bureau even without complainant's consent.

2. **ID.; DISBARMENT; DECEIT AND EVASION OF DUTY MANIFESTED IN CASE AT BAR CONSTITUTED GROSS PROFESSIONAL MISCONDUCT AND VIOLATION OF LAWYER'S OATH.—** Atty. Ancheta's deceit and evasion of duty is manifest. He accepted the case though he knew the futility of an appeal. Despite receipt of the ₱30,000.00 acceptance fee, he did not act on his client's case. Moreover, he prevailed upon complainants to give him ₱200,000.00 purportedly to be used to bribe the Justices of the Court of Appeals in order to secure a favorable ruling, palpably showing that he himself was unconvinced of the merits of the case. "A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause." Atty. Ancheta's misconduct betrays his lack of appreciation that the practice of law is a profession, not a money-making trade. As a servant of the law, Atty. Ancheta's primary duty was to obey the laws and promote respect for the law and legal processes. Corollary to this duty is his obligation to abstain from dishonest or deceitful conduct, as well as from "activities aimed at defiance of the law or at lessening confidence in the legal system." Atty. Ancheta's advice involving corruption of judicial officers tramps the integrity and dignity of the legal profession and the judicial system and adversely reflects on his fitness to practice law. x x x Atty. Ancheta's deceit in dealing with his clients constitutes gross professional misconduct and violates his oath, thus justifying his disbarment under Rule 138, Section 27 of the Rules of Court.

3. **ID.; ID.; ID.; FAILURE TO HEED COURT RESOLUTIONS DESPITE NOTICE AGGRAVATES THE MISCONDUCT OF COUNSEL.—** Atty. Ancheta's failure to heed the Resolutions of the Court despite notice aggravates his misconduct: x x x Atty. Ancheta's cavalier attitude in repeatedly ignoring the orders of this Court constitutes utter disrespect of the judicial institution. His conduct shows a high degree of

irresponsibility and betrays a recalcitrant flaw in his character. Indeed, his continued indifference to this Court's orders constitutes willful disobedience of the lawful orders of this Court, which, under Rule 138, Section 27 of the Rules of Court, is in itself a sufficient cause for suspension or disbarment. The maintenance of a high standard of legal proficiency, honesty, and fair dealing is a prerequisite to making the bar an effective instrument in the proper administration of justice. Any member, therefore, who fails to live up to the exacting standards of integrity and morality exposes himself or herself to administrative liability. Atty. Ancheta's violations show that he is unfit to discharge the duties of a member of the legal profession. Hence, he should be disbarred.

## RESOLUTION

***PER CURIAM*:**

This resolves a disbarment case against respondent Atty. Henry B. So for neglect in handling a case, and respondent Atty. Ferdinand L. Ancheta for extorting ₱200,000.00 from a client.

Complainant Flordeliza C. Tolentino was the defendant in Civil Case No. SC-2267 entitled "*Benjamin Caballes v. Flordeliza Caballes*," a case involving recovery of possession of a parcel of land.[1] On June 24, 1991, Branch 26 of the Regional Trial Court of Sta. Cruz, Laguna, rendered the Decision[2] against complainant Flordeliza ordering her to vacate the land.

The case was appealed[3] to the Court of Appeals through complainant Flordeliza's counsel, Atty. Edilberto U. Coronado (Atty. Coronado). While the appeal was pending, Atty. Coronado was replaced by Atty. Henry B. So (Atty. So), a lawyer of the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform.[4]

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[1] *Rollo*, p. 12.

[2] *Id.* at 12-23. The Decision was penned by Judge Jose Catral Mendoza (now Associate Justice of this Court).

[3] *Id.* at 24.

[4] *Id.* at 133, Notice of Appearance dated August 11, 1993.

Complainants Flordeliza and Gabino V. Tolentino, her husband, afterwards learned that the Court of Appeals affirmed[5] the Regional Trial Court Decision against complainant Flordeliza. Complainants contend that Atty. So did not inform them nor take the necessary action to elevate the case to this Court.[6] Thus, they were compelled to secure the legal services of Atty. Ferdinand L. Ancheta (Atty. Ancheta), whom they paid ₱30,000.00 as acceptance fee.[7]

Atty. Ancheta allegedly promised them that there was still a remedy against the adverse Court of Appeals Decision, and that he would file a "motion to reopen appeal case."[8] Atty. Ancheta also inveigled them to part with the amount of ₱200,000.00 purportedly to be used for making arrangements with the Justices of the Court of Appeals before whom their case was pending.[9]

Initially, complainants did not agree to Atty. Ancheta's proposal because they did not have the money and it was against the law.[10] However, they eventually acceded when Atty. Ancheta told them that it was the only recourse they had to obtain a favorable judgment.[11]

Hence, in January 2003, they deposited ₱200,000.00 to Atty. Ancheta's Bank Account No. 1221275656 with the United Coconut Planters Bank.[12]

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[5] *Id.* at 25-37. The Decision was penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino of the Ninth Division, Court of Appeals, Manila.

[6] *Id.* at 2.

[7] *Id.* at 38.

[8] *Id.* at 2.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

Complainants were surprised to learn that no "motion to reopen case" had been filed,[13] and the Court of Appeals Decision had become final and executory.[14]

Hence, complainants sought to recover the amount of ₱200,000.00 from Atty. Ancheta. Through a letter dated September 10, 2003[15] by their new counsel, complainants demanded for the return of the ₱200,000.00. However, Atty. Ancheta did not heed their demand despite receipt of the letter.

On May 17, 2004, complainants filed their *Sinumpaang Sakdal*[16] praying for the disbarment of Atty. So for neglect in handling complainant Flordeliza's case, and Atty. Ancheta for defrauding them of the amount of ₱200,000.00.

Atty. So counters that he was no longer connected with the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform when the Court of Appeals Decision was promulgated on July 16, 2001.[17] He alleges that he worked at the Bureau from 1989 to 1997, and that he resigned to prepare for the elections in his hometown in Western Samar.[18] It was a procedure in the Bureau that once a handling lawyer resigns or retires, his or her cases are reassigned to other lawyers of the Bureau.[19]

Atty. Ancheta did not file a comment despite due notice. Hence, in this Court's Resolution dated February 23, 2011,[20] he was deemed to have waived his right to file a comment. This Court referred the case to the Integrated Bar of the Philippines for investigation, report, and recommendation.[21]

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[13] *Id.* at 44, Annex L.

[14] *Id.* at 45, Annex M.

[15] *Id.* at 46-47.

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

[17] *Id.* at 122, Atty. So's Comment.

[18] *Id.* at 121.

[19] *Id.* at 122.

[20] *Id.* at 194.

[21] *Id.*

On June 8, 2011, the Commission on Bar Discipline of the Integrated Bar of the Philippines directed the parties to appear for mandatory conference at 10:00 a.m. on July 6, 2011.[22] However, on July 6, 2011, only Atty. So appeared.[23] Since there was no showing on record that complainants and Atty. Ancheta were notified, the mandatory conference was reset to August 10, 2011 at 10:00 a.m.[24]

In the August 10, 2011 mandatory conference, complainant Flordeliza was represented by her daughter, Arlyn Tolentino, together with counsel, Atty. Restituto Mendoza.[25] Arlyn Tolentino informed the Commission that complainant Gabino V. Tolentino had already died.[26] Respondents did not appear despite due notice.[27]

Hence, the mandatory conference was terminated, and the parties were directed to submit their respective verified position papers within a non-extendible period of 10 days from notice. After, the case would be submitted for report and recommendation.[28]

On September 19, 2011, complainant Flordeliza filed as her position paper, a Motion for Adoption of the Pleadings and their Annexes in this Case,[29] including the relevant documents[30] in Criminal Case No. SC-1191 (for estafa) against Atty. Ancheta, which she filed.

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[22] *Id.* at 196, Notice of Mandatory Conference/Hearing.

[23] *Id.* at 197, Minutes of the Hearing on July 6, 2011.

[24] *Id.* at 198, Order dated July 6, 2011.

[25] *Id.* at 202, Minutes of the Hearing on August 10, 2011.

[26] *Id.* at 205-207.

[27] *Id.* at 203, Order dated August 10, 2011.

[28] *Id.*

[29] *Id.* at 224-227.

[30] *Id.* at 228-230, Annex "A", Sinumpaang Sakdal of complainants; 231-232, Annex "B", Sinumpaang Sakdal of Roseline Caballes; 233, Annex "C", Memorandum of Preliminary Investigation; 234, Annex "D", Subpoena; and 235, Annex "E", Warrant of Arrest.

Atty. So filed his Position Paper[31] on September 15, 2011. Atty. Ancheta did not file any position paper.[32]

The Commission on Bar Discipline recommended[33] that Atty. So be absolved of the charge against him for insufficiency of evidence.[34] As to Atty. Ancheta, the Commission found him guilty of serious misconduct and deceit and recommended his disbarment.[35]

In the Resolution[36] dated December 14, 2014, the Integrated Bar of the Philippines Board of Governors adopted and approved the findings and recommendations of the Investigating Commissioner.

On January 11, 2016, the Board of Governors transmitted its Resolution to this Court for final action, pursuant to Rule 139-B of the Rules of Court.[37]

This Court accepts and adopts the findings of the Integrated Bar of the Philippines Board of Governors.

**I**

The Integrated Bar of the Philippines correctly absolved Atty. So of the charge of negligence in the performance of his duties as counsel of complainant Flordeliza.

Complainants fault Atty. So for failing to inform them about the Court of Appeals Decision and for not taking the necessary steps to elevate their case to this Court.[38] However, it is undisputed that Atty. So was no longer employed at the

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[31] *Id.* at 209-215.

[32] *Id.* at 241, Report and Recommendation dated September 6, 2013.

[33] *Id.* at 240-248. The Report and Recommendation was penned by Commissioner Romualdo A. Din, Jr.

[34] *Id.* at 248.

[35] *Id.*

[36] *Id.* at 238.

[37] *Id.* at 237.

[38] *Id.* at 2.

Bureau of Agrarian Legal Assistance when the Court of Appeals Decision was rendered on July 16, 2001. Atty. So had resigned in 1997, four (4) years before the Decision was promulgated.[39]

Atty. So handled the appeal of complainant Flordeliza in his capacity as a government-employed legal officer of the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform. In his Notice of Appearance[40] dated August 11, 1993 and Motion to Admit Additional Evidence[41] dated November 22, 1993 filed before the Court of Appeals, Atty. So affixed his signature under the representation of the Bureau of Agrarian Legal Assistance.

Atty. So's appearance for complainant Flordeliza may be likened to that of a lawyer assigned to handle a case for a private law firm's client. If the counsel resigns, the firm is simply bound to provide a replacement.[42] Similarly, upon Atty. So's resignation, the Director of the Bureau merely reassigned his case assignment to other lawyers in the Bureau even without complainants' consent.

It would have been prudent for Atty. So to have informed complainants about his resignation and the eventual reassignment of their case to another lawyer, although this was not required. Still, Atty. So's omission is not of such gravity that would warrant his disbarment or suspension. The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence of the respondent's misconduct affecting his standing and moral character as an officer of the court and member of the bar.[43]

On the other hand, complainants were not entirely blameless. Had complainants been indeed vigilant in protecting their rights,

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[39] *Id.* at 121.

[40] *Id.* at 133.

[41] *Id.* at 136-137.

[42] *Rilloraza v. Eastern Telecommunications Phils., Inc.*, 369 Phil. 1, 10 (1999) [Per *J.* Pardo, First Division].

[43] See *Gonzaga v. Atty. Villanueva, Jr.,* 478 Phil. 859, 870 (2004) [Per *C.J.* Davide, Jr., First Division], citing *Resurreccion v. Sayson*, 360 Phil. 313, 321 (1998) [*Per Curiam, En Banc*].

they should have followed up on the status of their appeal; thus, they would have been informed of Atty. So's resignation. Atty. So resigned four (4) years before the Court of Appeals Decision was promulgated.[44] Thus, complainants had ample time to engage the services of a new lawyer to safeguard their interests if they chose to do so. A party cannot blame his or her counsel for negligence when he or she is guilty of neglect.[45]

**II**

The same conclusion cannot be made with regards Atty. Ancheta. We agree with the Integrated Bar of the Philippines' recommendation that he should be disbarred.

Atty. Ancheta's repeated failure to comply with several of this Court's Resolutions requiring him to comment on the complaint lends credence to complainants' allegations. It manifests his tacit admission. Hence, we resolve this case on the basis of complainants' *Sinumpaang Sakdal* and its Annexes.

It was established by the evidence on record that (1) Atty. Ancheta received the acceptance fee of ₱30,000.00 on December 9, 2002;[46] and (2) complainants deposited on January 17, 2003[47] the amount of ₱200,000.00 to Atty. Ancheta's bank account. Atty. Ancheta made false promises to complainants that something could still be done with complainant Flordeliza's case despite the Court of Appeals Decision having already attained finality on September 22, 2001.[48] Worse, he proposed bribing the Justices of the Court of Appeals in order to solve their legal dilemma.

Atty. Ancheta should have very well known that a decision that has attained finality is no longer open for reversal and should

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[44] *Rollo*, p. 121.

[45] See *Macapagal v. Court of Appeals*, 338 Phil. 206, 217 (1997) [Per *J*. Mendoza, Second Division].

[46] *Rollo*, p. 38.

[47] *Id.* at 43.

[48] *Id.* at 45.

be respected.[49] A lawyer's duty to assist in the speedy administration of justice[50] demands recognition that at a definite time, issues must be laid to rest and litigation ended.[51] As such, Ancheta should have advised complainants to accept the judgment of the Court of Appeals and accord respect to the just claim of the opposite party. He should have tempered his clients' propensity to litigate and save them from additional expense in pursuing their contemplated action. Instead, he gave them confident assurances that the case could still be reopened and even furnished them a copy of his prepared "motion to reopen case." Despite his representation that he would file the motion, however, he did not do so.[52]

Atty. Ancheta's deceit and evasion of duty is manifest. He accepted the case though he knew the futility of an appeal. Despite receipt of the ₱30,000.00 acceptance fee, he did not act on his client's case. Moreover, he prevailed upon complainants to give him ₱200,000.00 purportedly to be used to bribe the Justices of the Court of Appeals in order to secure a favorable ruling, palpably showing that he himself was unconvinced of the merits of the case. "A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause."[53] Atty. Ancheta's misconduct betrays his lack of appreciation that the practice of law is a profession, not a money-making trade.[54]

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[49] *Atty. Alonso, et al. v. Atty. Relamida, Jr.,* 640 Phil. 325, 333 (2010) [Per *J*. Peralta, *En Banc*].

[50] Code of Professional Responsibility, Canon 12.

[51] *In Re Joaquin T. Borromeo*, 311 Phil. 441, 508 (1995) [*Per Curiam, En Banc*].

[52] *Rollo*, p. 2.

[53] Code of Professional Responsibility, Canon 1, Rule 1.03 provides:

Rule 1.03. – A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.

[54] *Manzano v. Atty. Soriano*, 602 Phil. 419, 427 (2009) [*Per Curiam, En Banc*]; *Atty. Khan, Jr. v. Atty. Simbillo*, 456 Phil. 560, 567 (2003) [Per *J.* Ynares-Santiago, First Division].

As a servant of the law, Atty. Ancheta's primary duty was to obey the laws and promote respect for the law and legal processes.[55] Corollary to this duty is his obligation to abstain from dishonest or deceitful conduct,[56] as well as from "activities aimed at defiance of the law or at lessening confidence in the legal system."[57] Atty. Ancheta's advice involving corruption of judicial officers tramps the integrity and dignity of the legal profession and the judicial system and adversely reflects on his fitness to practice law.

Complainants eventually found out about his duplicity and demanded for the return of their money.[58] Still, Atty. Ancheta did not return the ₱200,000.00 and the ₱30,000.00 despite his failure to render any legal service to his clients.[59]

Atty. Ancheta breached the following duties embodied in the Code of Professional Responsibility:

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

. . . . . . . . .

CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

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[55] Code of Professional Responsibility, Canon 1 provides:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

[56] Code of Professional Responsibility, Canon 1, Rule 1.01 provides:

Rule 1.01. — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[57] Code of Professional Responsibility, Canon 1, Rule 1.02 provides:

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.

[58] *Rollo*, pp. 46-47.

[59] *Id.*

Rule 15.05. – 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.

Rule 15.06. – A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

Rule 15.07. – A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

. . . . . . . . .

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01. – A lawyer shall account for all money or property collected or received for or from the client.

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Rule 16.03. – A lawyer shall deliver the funds and property of his client when due or upon demand. . . .

. . . . . . . . .

CANON 17 – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

. . . . . . . . .

Rule 18.03. – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

A lawyer "must at no time be wanting in probity and moral fiber, which are not only conditions precedent to his entrance to the Bar but are likewise essential demands for his continued membership therein."[60] Atty. Ancheta's deceit in dealing with

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[60] *Gonzaga v. Atty. Villanueva, Jr.*, 478 Phil. 859, 869 (2004) [Per *C.J.* Davide, Jr., First Division].

his clients constitutes gross professional misconduct[61] and violates his oath, thus justifying his disbarment under Rule 138, Section 27[62] of the Rules of Court.

Furthermore, his failure to heed the following Resolutions of the Court despite notice aggravates his misconduct:

(1) Resolution[63] dated June 21, 2004, requiring him to comment on the complaint;

(2) Resolution[64] dated October 16, 2006, directing him to show cause why he should not be disciplinarily dealt with or held in contempt for failure to comply with the June 21, 2004 Resolution;

(3) Resolution[65] dated January 21, 2009, imposing upon him the penalty of ₱1,000.00 for failure to comply with the June 21, 2004 and October 16, 2006 Resolutions;

(4) Resolution[66] dated January 27, 2010, imposing an additional fine of ₱2,000.00 or a penalty of imprisonment of 10 days for failure to comply with the January 21, 2009 Resolution; and

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[61] *Sipin-Nabor v. Atty. Baterina y Figueras*, 412 Phil. 419, 424-425 (2001) [Per *J.* Pardo, *En Banc*].

[62] RULES OF COURT, Rule 138, Sec. 27 provides:

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 the admission to practice, or for a willful disobedience of any lawful order of a superior court or for corruptly or willfully appearing as an attorney for a party without authority to do so[.] See also *Businos v. Atty. Ricafort*, 347 Phil. 687, 695 (1997) [*Per Curiam, En Banc*].

[63] *Rollo*, p. 52. See also *rollo*, p. 155, letter of the Postmaster, Makati Central Post Office, Makati City. The Resolution was received by a certain Rey Teresa on August 10, 2004.

[64] *Id.* at 157.

[65] *Id.* at 173.

[66] *Id.* at 175.

(5) Resolution[67] dated January 12, 2011, ordering his arrest and directing the National Bureau of Investigation to arrest and detain him for five (5) days and until he complied with the previous Resolutions.

Atty. Ancheta's cavalier attitude in repeatedly ignoring the orders of this Court constitutes utter disrespect of the judicial institution. His conduct shows a high degree of irresponsibility and betrays a recalcitrant flaw in his character. Indeed, his continued indifference to this Court's orders constitutes willful disobedience of the lawful orders of this Court, which, under Rule 138, Section 27[68] of the Rules of Court, is in itself a sufficient cause for suspension or disbarment.

The maintenance of a high standard of legal proficiency, honesty, and fair dealing[69] is a prerequisite to making the bar an effective instrument in the proper administration of justice.[70] Any member, therefore, who fails to live up to the exacting standards of integrity and morality exposes himself or herself to administrative liability.[71]

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[67] *Id.* at 179.

[68] RULES OF COURT, Rule 138, Sec. 27 provides:

*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 lawful 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. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

[69] *Luna v. Atty. Galarrita*, A.C. No. 10662, July 7, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/10662.pdf> [Per *J.* Leonen, *En Banc*].

[70] *Atty. Alcantara, et al. v. Atty. De Vera,* 650 Phil. 214, 220-221 (2010) [*Per Curiam, En Ba*nc].

[71] *Villanueva v. Atty. Gonzales*, 568 Phil. 379, 389 (2008) [Per *J*. Carpio, *En Banc*]; *Sipin-Nabor v. Atty. Baterina y Figueras*, 412 Phil. 419, 424 (2001)

Atty. Ancheta's violations show that he is unfit to discharge the duties of a member of the legal profession. Hence, he should be disbarred.[72]

**WHEREFORE**, the complaint against respondent Atty. Henry B. So is **DISMISSED** for insufficiency of evidence. On the other hand, this Court finds respondent Atty. Ferdinand L. Ancheta **GUILTY** of gross misconduct in violation of the Lawyer's Oath and the Code of Professional Responsibility and hereby **DISBARS** him from the practice of law. The Office of the Bar Confidant is **DIRECTED** to remove the name of Ferdinand L. Ancheta from the Roll of Attorneys.

Respondent Ancheta is **ORDERED** to return to complainants Gabino V. Tolentino and Flordeliza C. Tolentino, within 30 days from receipt of this Resolution, the total amount of ₱230,000.00, with legal interest at 12% per annum from the date of demand on September 10, 2003 to June 30, 2013, and at 6% per annum from July 1, 2013 until full payment. Respondent Ancheta is further **DIRECTED** to submit to this Court proof of payment of the amount within 10 days from payment.

Let copies of this Resolution be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for dissemination to all courts in the country.

This Resolution takes effect immediately.

**SO ORDERED**.

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

*Brion, J.,* on leave.

*Mendoza, J.,* on official leave.

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[Per *J.* Pardo, *En Banc*]; and *Radjaie v. Atty. Alovera*, 392 Phil. 1, 17 (2000) [*Per Curiam, En Banc*].

[72] *Tan v. Diamante*, A.C. No. 7766, August 5, 2014, 732 SCRA 1, 10 [*Per Curiam, En Banc*].

**EN BANC**

[A.C. No. 11078. July 19, 2016]

**VERLITA V. MERCULLO and RAYMOND VEDANO,** *complainants, vs.* **ATTY. MARIE FRANCES E. RAMON,** *respondent.*

**SYLLABUS**

1. **LEGAL ETHICS; ATTORNEYS; MUST AT NO TIME BE WANTING IN PROBITY AND MORAL FIBER WHICH ARE NOT ONLY CONDITIONS PRECEDENT TO ADMISSION TO THE BAR, BUT ARE ALSO ESSENTIAL FOR CONTINUED MEMBERSHIP IN THE LAW PROFESSION.—** The Lawyer's Oath is a source of the obligations and duties of every lawyer. Any violation of the oath may be punished with either disbarment, or suspension from the practice of law, or other commensurate disciplinary action. Every lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his admission to the Bar, but are also essential for his continued membership in the Law Profession. Any conduct unbecoming of a lawyer constitutes a violation of his oath.

2. **ID.; ID.; A LAWYER IS PROSCRIBED FROM ENGAGING IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT IN HER DEALINGS WITH OTHERS, ESPECIALLY CLIENTS WHOM SHE SHOULD SERVE WITH COMPETENCE AND DILIGENCE.—** The respondent certainly transgressed the Lawyer's Oath by receiving money from the complainants after having made them believe that she could assist them in ensuring the redemption in their mother's behalf. She was convincing about her ability to work on the redemption because she had worked in the NHFMC. She did not inform them soon enough, however, that she had meanwhile ceased to be connected with the agency. It was her duty to have so informed them. She further misled them about her ability to realize the redemption by falsely informing them about having started the redemption process. She concealed from them the real story that she had not even initiated the redemption proceedings that she had assured them she would

do. Everything she did was dishonest and deceitful in order to have them part with the substantial sum of ₱350,000.00. She took advantage of the complainants who had reposed their full trust and confidence in her ability to perform the task by virtue of her being a lawyer. Surely, the totality of her actuations inevitably eroded public trust in the Legal Profession. As a lawyer, the respondent was proscribed from engaging in unlawful, dishonest, immoral or deceitful conduct in her dealings with others, especially clients whom she should serve with competence and diligence. Her duty required her to maintain fealty to them, binding her not to neglect the legal matter entrusted to her. Thus, her neglect in connection therewith rendered her liable. Moreover, the unfulfilled promise of returning the money and her refusal to communicate with the complainants on the matter of her engagement aggravated the neglect and dishonesty attending her dealings with the complainants. The respondent's conduct patently breached Rule 1.01, Canon 1 of the *Code of Professional Responsibility* x x x. Evil intent was not essential in order to bring the unlawful act or omission of the respondent within the coverage of Rule 1.01 of the *Code of Professional Responsibility.* The Code exacted from her not only a firm respect for the law and legal processes but also the utmost degree of fidelity and good faith in dealing with clients and the moneys entrusted by them pursuant to their fiduciary relationship.

3. **ID.; ID.; VIOLATION OF THE LAWYER'S OATH AND THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY IN CASE AT BAR.—** The respondent deserves severe chastisement and appropriate sanctions. In this regard, the IBP Board of Governors recommended her suspension for two years from the practice of law, and her return of the amount of ₱350,000.00 to the complainants. The recommended penalty is not commensurate to the gravity of the misconduct committed. She merited a heavier sanction of suspension from the practice of law for five years. Her professional misconduct warranted a longer suspension from the practice of law because she had caused material prejudice to the clients' interest. She should somehow be taught to be more ethical and professional in dealing with trusting clients like the complainants and their mother, who were innocently too willing to repose their utmost trust in her abilities as a lawyer and in her trustworthiness as a legal professional. In this connection, we state that the usual

mitigation of the recommended penalty by virtue of the misconduct being her first offense cannot be carried out in her favor considering that she had disregarded the several notices sent to her by the IBP in this case.

## D E C I S I O N

**BERSAMIN, *J.*:**

This case concerns the complaint for the disbarment of Atty. Marie Frances E. Ramon for violating Rule 1.01, Canon 1 of the *Code of Professional Responsibility* and the Lawyer's Oath for deceiving the complainants in order to obtain the substantial amount of ₱350,000.00 on the pretext of having the foreclosed asset of the latter's mother redeemed.

### Antecedents

In the period from 2002 to 2011, the National Home Mortgage Finance Corporation (NHMFC) sent several demand letters to Carmelita T. Vedaño[1] regarding her unpaid obligations secured by the mortgage covering her residential property in Novaliches, Caloocan City.[2] To avoid the foreclosure of the mortgage, Carmelita authorized her children, Verlita Mercullo and Raymond Vedaño (complainants herein), to inquire from the NHMFC about the status of the obligations. Verlita and Raymond learned that their mother's arrears had amounted to ₱350,000.00, and that the matter of the mortgage was under the charge of respondent Atty. Ramon, but who was not around at that time.

On June 20, 2012, Carmelita received a letter from the sheriff of the Regional Trial Court (RTC) in Caloocan City, stating that her property would be put up for auction in July 2013. Verlita and Raymond thus went to the NHMFC to see the respondent, who advised them about their right to redeem the property within one year from the foreclosure.[3]

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[1] *Rollo*, pp. 9-11.

[2] *Id.* at 12.

[3] *Id.* at 3.

In August 2013, Verlita and Raymond called up the respondent, and expressed their intention to redeem the property by paying the redemption price. The latter agreed and scheduled an appointment with them on August 30, 2013.

On August 30, 2013, the respondent arrived at the designated meeting place at around 1:30 p.m., carrying the folder that Verlita and Raymond had seen at the NHFMC when they inquired on the status of their mother's property. After the respondent had oriented them on the procedure for redemption, the complainants handed ₱350,000.00 to the respondent, who signed an acknowledgment receipt.[4] The respondent issued two acknowledgment receipts for the redemption price and for litigation expenses,[5] presenting to the complainants her NHMFC identification card. Before leaving them, she promised to inform them as soon as the documents for redemption were ready for their mother's signature.[6]

On September 4, 2013, the respondent met with Verlita and handed a letter[7] that she had signed, along with the special power of attorney (SPA) for Carmelita's signature.[8] The letter reads:

Office of the Clerk of Court and Ex Officio Sheriff
Regional Trial Court
Caloocan City

Re: Redemption of the property covered by EJF No. 7484-2013

Dear Atty. Dabalos,

Please assist Ms. Carmelita Vedano, through her Attorney-in-Fact in redeeming the property covered by EJF No. 7484-2013. Please provide the necessary computation as to the full redemption amount in order for Ms. Vedano to redeem the same.

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[4] *Id.* at 14.

[5] *Id.* at 15-16.

[6] *Id.* at 4.

[7] *Id.* at 17.

[8] *Id.* at 18.

Thank you.

Truly yours,

(Sgd.)
Atty. Marie Frances E. Ramon

Verlita and Raymond went to the NHMFC on September 9, 2013 to follow up on the redemption, but discovered that the respondent had already ceased to be connected with the NHMFC. On September 20, 2013, they met with her at Branch 145 of the Regional Trial Court in Makati City where she was attending a hearing. She informed them that the redemption was under process, and that the certificate of redemption would be issued in two to three weeks time.[9]

After communicating through text messages with the respondent, Verlita and Raymond finally went to see the Clerk of Court of the Regional Trial Court in Caloocan City on November 27, 2013 to inquire on the status of the redemption. There, they discovered that the respondent had not deposited the redemption price and had not filed the letter of intent for redeeming the property.[10]

On December 5, 2013, Verlita and Raymond again went to Branch 145 of the Regional Trial Court in Makati City where the respondent had a hearing, and handed to her their demand letter requiring her to return the amount she had received for the redemption.[11] She acknowledged the letter and promised to return the money on December 16, 2013 by depositing the amount in Verlita's bank account. However, she did not fulfill her promise and did not show up for her subsequent scheduled hearings in Branch 145.[12]

With their attempts to reach the respondent being in vain, Verlita and Raymond brought their disbarment complaint in the Integrated Bar of the Philippines (IBP).

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[9] *Id.* at 5.

[10] *Id.*

[11] *Id.* at 9.

[12] *Id.* at 6.

### Findings and Recommendation of the IBP

The respondent did not submit her answer when required to do so. She also did not attend the mandatory conference set by the IBP despite notice. Hence, the investigation proceeded *ex parte.*[13]

IBP Commissioner Arsenio P. Adriano submitted his Report and Recommendation,[14] whereby he found the respondent to have violated Rule 1.01 of the *Code of Professional Responsibility* for engaging in deceitful conduct, and recommended her suspension from the practice of law for two years, and her return to the complainants of ₱350,000.00 with legal interest from December 2, 2013.

The IBP Board of Governors adopted Commissioner Adriano's recommendation as stated in its Resolution No. XXI-2014-929,[15] *viz.*:

> RESOLVED to ADOPT and APPROVE, as it is hereby 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 to be fully supported by the evidence on record and applicable laws, and for violation of Rule 1.01 of the Code of Professional Responsibility, Atty. Marie Frances E. Ramon is hereby **SUSPENDED from the practice of law for two (2) years and Ordered to Return the amount of Three Hundred Fifty Thousand (₱350,000.00) Pesos to Complainant.**

### Ruling of the Court

The Court declares the respondent guilty of dishonesty and deceit.

The Lawyer's Oath is a source of the obligations and duties of every lawyer. Any violation of the oath may be punished with either disbarment, or suspension from the practice of law,

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[13] *Id.* at 37.

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

[15] *Id.* at 36.

or other commensurate disciplinary action.[16] Every lawyer must at no time be wanting in probity and moral fiber which are not only conditions precedent to his admission to the Bar, but are also essential for his continued membership in the Law Profession.[17] Any conduct unbecoming of a lawyer constitutes a violation of his oath.

The respondent certainly transgressed the Lawyer's Oath by receiving money from the complainants after having made them believe that she could assist them in ensuring the redemption in their mother's behalf. She was convincing about her ability to work on the redemption because she had worked in the NHFMC. She did not inform them soon enough, however, that she had meanwhile ceased to be connected with the agency. It was her duty to have so informed them. She further misled them about her ability to realize the redemption by falsely informing them about having started the redemption process. She concealed from them the real story that she had not even initiated the redemption proceedings that she had assured them she would do. Everything she did was dishonest and deceitful in order to have them part with the substantial sum of ₱350,000.00. She took advantage of the complainants who had reposed their full trust and confidence in her ability to perform the task by virtue of her being a lawyer. Surely, the totality of her actuations inevitably eroded public trust in the Legal Profession.

As a lawyer, the respondent was proscribed from engaging in unlawful, dishonest, immoral or deceitful conduct in her dealings with others, especially clients whom she should serve with competence and diligence.[18] Her duty required her to maintain fealty to them, binding her not to neglect the legal matter entrusted to her. Thus, her neglect in connection therewith rendered her liable.[19] Moreover, the unfulfilled promise of returning the money

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[16] *Vitriolo v. Dasig*, A.C. No. 4984, April 1, 2003, 400 SCRA 172, 179.

[17] *Penilla v. Alcid, Jr.*, A.C. No. 9149, September 4, 2013, 705 SCRA 1, 11.

[18] *Arroyo-Posidio v. Vitan*, A.C. No. 6051, April 2, 2007, 520 SCRA 1, 8.

[19] Rule 18.03, *Code of Professional Responsibility*.

and her refusal to communicate with the complainants on the matter of her engagement aggravated the neglect and dishonesty attending her dealings with the complainants.

The respondent's conduct patently breached Rule 1.01, Canon 1 of the *Code of Professional Responsibility*, which provides:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

Rule 1.01 A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

Evil intent was not essential in order to bring the unlawful act or omission of the respondent within the coverage of Rule 1.01 of the *Code of Professional Responsibility*.[20] The Code exacted from her not only a firm respect for the law and legal processes but also the utmost degree of fidelity and good faith in dealing with clients and the moneys entrusted by them pursuant to their fiduciary relationship.[21]

Yet another dereliction of the respondent was her wanton disregard of the several notices sent to her by the IBP in this case. Such disregard could only be wrong because it reflected her undisguised contempt of the proceedings of the IBP, a body that the Court has invested with the authority to investigate the disbarment complaint against her. She thus exhibited her irresponsibility as well as her utter disrespect for the Court and the rest of the Judiciary. It cannot be understated that a lawyer in her shoes should comply with the orders of the Court and of the Court's duly constituted authorities, like the IBP, the office that the Court has particularly tasked to carry out the specific function of investigating attorney misconduct.[22]

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[20] *Re: Report on the Financial Audit Conducted on the Books of Accounts of Atty. Raquel G. Kho, Clerk of Court IV, Regional Trial Court, Oras, Eastern Samar*, A.M. No. P-06-2177, April 19, 2007, 521 SCRA 25, 28-29.

[21] *Anacta v. Resurreccion*, A.C. No. 9074, August 14, 2012, 678 SCRA 352, 360.

[22] *Pesto v. Millo*, A.C. No. 9612, March 13, 2013, 693 SCRA 281, 289-290.

The respondent deserves severe chastisement and appropriate sanctions. In this regard, the IBP Board of Governors recommended her suspension for two years from the practice of law, and her return of the amount of ₱350,000.00 to the complainants. The recommended penalty is not commensurate to the gravity of the misconduct committed. She merited a heavier sanction of suspension from the practice of law for five years. Her professional misconduct warranted a longer suspension from the practice of law because she had caused material prejudice to the clients' interest.[23] She should somehow be taught to be more ethical and professional in dealing with trusting clients like the complainants and their mother, who were innocently too willing to repose their utmost trust in her abilities as a lawyer and in her trustworthiness as a legal professional. In this connection, we state that the usual mitigation of the recommended penalty by virtue of the misconduct being her first offense cannot be carried out in her favor considering that she had disregarded the several notices sent to her by the IBP in this case. As to the return of the ₱350,000.00 to the complainant, requiring her to restitute with legal interest is only fair and just because she did not comply in the least with her ethical undertaking to work on the redemption of the property of the mother of the complainants. In addition, she is sternly warned against a similar infraction in the future; otherwise, the Court will have her suffer a more severe penalty.

**WHEREFORE,** the Court **FINDS** and **HOLDS ATTY. MARIE FRANCES E. RAMON** guilty of violating Canon 1, Rule 1.01 of the *Code of Professional Responsibility* and the Lawyer's Oath; **SUSPENDS HER FROM THE PRACTICE OF LAW FOR A PERIOD OF FIVE YEARS EFFECTIVE FROM NOTICE**, with the **STERN WARNING** that any similar infraction in the future will be dealt with more severely; **ORDERS** her to return to the complainants the sum of ₱350,000.00 within 30 days from notice, plus legal interest of 6% *per annum* reckoned from the finality of this decision until full payment; and **DIRECTS** her to promptly submit to this Court written proof

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[23] Agpalo, *Legal Ethics*, 2009 ed., p. 518.

of her compliance within the same period of 30 days from notice of this decision.

Let copies of this decision be furnished to the Office of the Bar Confidant, to be appended to Atty. Marie Frances E. Ramon's personal record as an attorney; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

**SO ORDERED.**

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

*Brion, J.,* on leave.

*Mendoza, J.,* on official leave.

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**EN BANC**

[G.R. No. 204605. July 19, 2016]

**INTELLECTUAL PROPERTY ASSOCIATION OF THE PHILIPPINES,** *petitioner, vs.* **HON. PAQUITO OCHOA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, HON. ALBERT DEL ROSARIO, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF FOREIGN AFFAIRS, and HON. RICARDO BLANCAFLOR, IN HIS CAPACITY AS THE DIRECTOR GENERAL OF THE INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES,** *respondents.*

## SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LITIGATIONS; LEGAL STANDING REFERS TO THE RIGHT OF APPEARANCE IN A COURT OF JUSTICE ON A GIVEN QUESTION; LIBERALLY CONSTRUED WHENEVER THE ISSUE PRESENTED HAS TRANSCENDENTAL SIGNIFICANCE OR OF PARAMOUNT IMPORTANCE TO THE PEOPLE.—** Legal standing refers to "a right of appearance in a court of justice on a given question." x x x The following elucidation in *De Castro v. Judicial and Bar Council* offers the general understanding of the context of legal standing, or *locus standi* for that purpose, *viz*.: x x x [T]he petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc*.: **The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.** x x x [Here,] the IPAP emphasizes that the paramount public interest involved has transcendental importance because its petition asserts that the Executive Department has overstepped the bounds of its authority by thereby cutting into another branch's functions and responsibilities. The assertion of the IPAP may be valid on this score. There is little question that the issues raised herein against the implementation of the *Madrid Protocol* are of transcendental importance. Accordingly, we recognize IPAP's *locus standi* to bring the present challenge. Indeed, the Court has adopted a liberal attitude towards *locus standi* whenever

the issue presented for consideration has transcendental significance to the people, or whenever the issues raised are of paramount importance to the public.

2. **POLITICAL LAW; INTERNATIONAL LAW; TREATIES AND INTERNATIONAL AGREEMENTS, DISTINGUISHED. —** [W]e have to distinguish between treaties and international agreements, which require the Senate's concurrence, on one hand, and executive agreements, which may be validly entered into without the Senate's concurrence. Executive Order No. 459, Series of 1997, notes the following definitions, to wit: **Sec. 2.** ***Definition of Terms.*** **a.** ***International agreement*** – shall refer to a contract or understanding, regardless of nomenclature, entered into between the Philippines and another government in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments. **b.** ***Treaties*** – international agreements entered into by the Philippines which require legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants and acts. **c.** ***Executive Agreements*** – similar to treaties except that they do not require legislative concurrence. The Court has highlighted the difference between treaties and executive agreements in *Commissioner of Customs v. Eastern Sea Trading,* thusly: International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying *adjustments of detail* carrying out well-established national policies and traditions and those involving arrangements of a more or less *temporary* nature usually take the form of executive agreements.

3. **ID.; EXECUTIVE DEPARTMENT; DEPARTMENT OF FOREIGN AFFAIRS (DFA); DFA SECRETARY'S DETERMINATION AND TREATMENT OF THE *MADRID PROTOCOL* (CONCERNING INTERNATIONAL REGISTRATION OF MARKS) AS EXECUTIVE AGREEMENT ARE UPHELD.—** In the Philippines, the DFA, by virtue of Section 9, Executive Order No. 459, is initially given the power to determine whether an agreement is to be treated as a treaty or as an executive agreement. To determine the issue of whether DFA Secretary Del Rosario gravely abused his discretion in making his determination relative to the *Madrid*

*Protocol*, we review the jurisprudence on the nature of executive agreements, as well as the subject matters to be covered by executive agreements. The pronouncement in *Commissioner of Customs v. Eastern Sea Trading* is instructive x x x [Thus,] the registration of trademarks and copyrights have been the subject of executive agreements entered into without the concurrence of the Senate. Some executive agreements have been concluded in conformity with the policies declared in the acts of Congress with respect to the general subject matter. It then becomes relevant to examine our state policy on intellectual property in general, as reflected in Section 2 of our IP Code. x x x In view of the expression of state policy having been made by the Congress itself, the IPAP is plainly mistaken in asserting that "there was no Congressional act that authorized the accession of the Philippines to the *Madrid Protocol*." Accordingly, DFA Secretary Del Rosario's determination and treatment of the *Madrid Protocol* as an executive agreement, being in apparent contemplation of the express state policies on intellectual property as well as within his power under Executive Order No. 459, are upheld.

4. **ID.; INTERNATIONAL LAW; THERE IS NO CONFLICT BETWEEN THE MADRID PROTOCOL AND THE INTELLECTUAL PROPERTY (IP) CODE.—** The IPAP also rests its challenge on the supposed conflict between the *Madrid Protocol* and the IP Code, contending that the *Madrid Protocol* does away with the requirement of a resident agent under Section 125 of the IP Code; and that the *Madrid Protocol* is unconstitutional for being in conflict with the local law, which it cannot modify. The IPAP's contentions stand on a faulty premise. The method of registration through the IPOPHL, as laid down by the IP Code, is distinct and separate from the method of registration through the World Intellectual Property Code (WIPO), as set in the *Madrid Protocol*. Comparing the two methods of registration despite their being governed by two separate systems of registration is thus misplaced. In arguing that the *Madrid Protocol* conflicts with Section 125 of the IP Code, the IPAP highlights the importance of the requirement for the designation of a resident agent. x x x The Intellectual Property Office of the Philippines (IPOPHL) actually requires the designation of the resident agent when it refuses the registration of a mark. Local representation is further required in the submission of the Declaration of Actual Use, as well as

in the submission of the license contract. The *Madrid Protocol* accords with the intent and spirit of the IP Code, particularly on the subject of the registration of trademarks. The *Madrid Protocol* does not amend or modify the IP Code on the acquisition of trademark rights considering that the applications under the *Madrid Protocol* are still examined *according to the relevant national law*. In that regard, the IPOPHL will only grant protection to a mark that meets the local registration requirements.

**BRION, *J.*, *separate concurring opinion*:**

1. **POLITICAL LAW; CONSTITUTIONAL LAW; THE COMPLEMENTARY PRINCIPLES OF SEPARATION OF POWERS AND CHECKS AND BALANCES CONCENTRATED IN THE THREE BRANCHES OF GOVERNMENT: THE LEGISLATURE, THE EXECUTIVE AND THE JUDICIARY.—** The Philippine government operates under the complementary principles of separation of powers and checks and balances. The three functions of government are concentrated in its three great branches, with each branch supreme in its own sphere: the ***Legislature*** possesses the power to create laws that are binding in the Philippines, which the ***Executive*** has the duty to implement and enforce. The ***Judiciary***, on the other hand, resolves conflicts that may arise from the implementation of these laws and, on occasion, nullifies acts of government (whether legislative or executive) that have been made with grave abuse of discretion under the Court's expanded jurisdiction in Article VIII, Section 1 of the 1987 Constitution. That each branch of government is supreme in its own sphere does not, however, mean that they no longer interact with or are isolated from one another in the exercise of their respective duties. To be sure, one branch cannot usurp the power of another without violating the principle of separation of powers, but this is not an absolute rule; rather, it is a rule that operates hand in hand with arrangements that allow the participation of one branch in another branch's action under the system of checks and balances that the Constitution itself provides.

2. **ID.; ID.; ID.; ON THE ISSUE OF ENTERING INTO INTERNATIONAL AGREEMENTS, THE PRESIDENT HAS FULL DISCRETION TO ENTER INTO INTERNATIONAL AGREEMENTS IN BEHALF OF THE PHILIPPINE GOVERNMENT, SUBJECT TO**

**CONCURRENCE BY THE SENATE FOR VALIDITY.—** The act of entering into international agreements operate under this wider context of separation of powers and checks and balances among the three branches of government. Without doubt, the President has the sole authority over, and is the country's chief representative in the conduct of foreign affairs. This authority includes the negotiation and ratification of international agreements: the President has full discretion (subject to the limits found in the Constitution) to negotiate and enter into international agreements in behalf of the Philippine government. But this discretion is subject to a check and balance from the legislative branch of government, that is, the Senate has to give its concurrence with an international agreement before it may be considered valid and effective in the Philippines.

3. **ID.; ID.; EXECUTIVE DEPARTMENT; EXECUTIVE AGREEMENT DISTINGUISHED FROM TREATY.—** [E]xecutive agreements have been recognized through jurisprudence and by the provisions of the 1973 and the 1987 Constitutions themselves. Although the 1935 Constitution did not expressly recognize the existence and validity of executive agreements, jurisprudence and practice under it did. x x x An ***executive agreement***, when examined under the definition of what constitutes a **treaty** under the Vienna Convention on Treaties, falls within the Convention's definition. An executive agreement as used in Philippine law is definitely "an international agreement concluded between States in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation[.]"The confusion that the seemingly differing treatment of executive agreement brings, however, is more apparent than real when it is considered that both instruments – a treaty and an executive agreement – both have constitutional recognition that can be reconciled: an executive agreement is an exception to the Senate concurrence requirement of Article VII, Section 21 of the 1987 Constitution; it is an international agreement that does not need Senate concurrence to be valid and effective in the Philippines. Its exceptional character arises from the reality that the Executive possesses the power and duty to execute and implement laws which, when considered together with the President's foreign affairs powers, authorizes the President to agree to international obligations that he can already implement as Chief Executive of the

Philippine government. x x x In contrast, treaties are international agreements that need concurrence from the Senate. They do not originate solely from the President's duty as the executor of the country's laws, but from the shared function that the Constitution mandated between the President and the Senate under Article VII, Section 21 of the 1987 Constitution. x x x When an international agreement merely implements an existing agreement, it is properly in the form of an executive agreement. In contrast, when an international agreement involves the introduction of a new subject matter or an amendment of existing agreements or laws, then it should properly be in the form of a treaty.

4. **ID.; ID.; ID.; THE OBLIGATIONS FOUND IN THE MADRID PROTOCOL MAY BE THE SUBJECT OF AN EXECUTIVE AGREEMENT TO BE IMPLEMENTED WITHOUT SUBSEQUENT SENATE CONCURRENCE.—** [As] to the contents of the Madrid Protocol, I find that the obligations in this international agreement may be the subject of an executive agreement. **The Madrid Protocol facilitates the Philippines' entry to the Madrid System. Under the Madrid System, a person can register his trademark internationally by filing for an international registration of his trademark in one of the contracting parties (*CP*) under the Madrid System. Once a person has filed for or acquired a trademark with the IPO in his country of origin (that is also a CP), he can file for the international recognition of his trademark with the same office.** The CP is then obligated to forward the request to the World Intellectual Property Organization's (*WIPO*) International Bureau, which will then forward it to the other CPs where the person has applied for trademark recognition. The IPO in these countries would then determine whether the trademark may be registered under the laws of their country. Thus, a foreign national may, in applying for an international registration of his trademark, include the Philippines as among the jurisdictions with which he seeks to register his trademark. Upon receipt of his application from the IPO of his country of origin, the WIPO would forward the application to the Philippine Intellectual Property Office (*IPOPHIL*). The IPOPHIL would then conduct a substantive examination of the application, and determine whether the trademark may be registered under Philippine law. Note, at this point, that the Madrid Protocol does not replace the procedure for the registration of trademarks

under the IP Code; neither does it impose or change the substantive requirements for the grant of a trademark. Whether through the mechanism under the Madrid Protocol or the IP Code, the requirements for a successful trademark registration remain the same. x x x Since the Executive is already authorized to create implementing rules and regulations that streamline the trademark registration process provided under the IP Code, then the Philippines' obligation under the Madrid Protocol may be implemented without subsequent Senate concurrence.

**PERLAS-BERNABE, *J., concurring opinion*:**

**POLITICAL LAW; EXECUTIVE DEPARTMENT; THE MADRID PROTOCOL IS AN EXECUTIVE AGREEMENT THAT NEED NOT BE CONCURRED IN BY AT LEAST TWO-THIRDS OF ALL THE MEMBERS OF THE SENATE TO BE VALID AND EFFECTIVE.—** Section 122 of Republic Act No. (RA) 8293 or the "Intellectual Property Code of the Philippines" (IP Code) provides that "[t]he rights in a mark shall be acquired through **registration** made validly in accordance with the provisions of the law." For applicants not domiciled in the Philippines, Section 124 of the IP Code requires "[t]he appointment of an agent or representative." x x x However, through the Philippines' accession to the Madrid Protocol x x x an applicant who is not domiciled in the Philippines but a national of a Contracting Party is now given the option to file his application in the IP Office of his own home country and thereupon, secure protection for his mark. x x x As per the posting of the World Intellectual Property Organization (WIPO), [under the] three (3) basic stages to the registration process: x x x the non-domiciliary's filing of an application in the IP Office of his home country is only the initial step to secure protection for his mark. Significantly, the application, after having been formally examined by the WIPO, has to be referred to the national or regional IP Office of the country in which the applicant seeks protection for the conduct of substantive examination. Ultimately, it is the latter office (in our case the Intellectual Property Office of the Philippines [IPOPHL]) which decides to accept or refuse registration. x x x In this regard, it bears stressing that the grounds for refusal of protection enumerated in the Paris Convention, specifically under Article 6*quinquies* (B) thereof, are substantially the same grounds for refusal for registration of

marks as enumerated under Section 123.1 of the IP Code. This further strengthens the classification of the Madrid Protocol as a mere executive agreement and not as a treaty, considering that it does not introduce any substantive alterations to our local law on trademarks, *i.e.*, the IP Code. x x x [T]he Madrid Protocol only provides for a centralized system of international registration of marks, which, in no way, denies the authority of the Philippines, through the IPOPHL, to substantively examine and consequently, grant or reject an application in accordance with our own laws and regulations. Hence, it does not involve a change in our national policy, which necessitates the need for a treaty.

**LEONEN, *J.*, *separate concurring opinion*:**

1. **POLITICAL LAW; CONSTITUTIONAL LAW; LEGAL STANDING; PETITIONER'S STANDING IS PREMISED ON A PERSONAL, DIRECT, AND MATERIAL INJURY.—** I concur with the x x x finding that petitioner has no legal standing to bring this suit. Within our jurisdiction, petitioner's standing in a constitutional suit is still premised on a personal, direct, and material injury. Whether this right is shared with the public in general or only with a defined class does not matter. It is clear in this case that the affected practitioners in intellectual property actions are different from their incorporated association. x x x Neither should *locus standi* be immediately negated by an invocation of the concept of transcendental interest. The use of this exception to waive the requirement of *locus standi* is now more disciplined. In *Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission, et al.*, this Court adopted the following determinants of whether an issue is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition, by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised. None of the above determinants are present in this case.

2. **ID.; ID.; JUDICIARY; JUDICIAL POWER INCLUDES THE DUTY TO DETERMINE WHETHER OR NOT THERE HAS BEEN GRAVE ABUSE OF DISCRETION ON THE PART OF ANY BRANCH OF THE GOVERNMENT.—** [T]he Solicitor General presents the argument that certiorari

under Rule 65, Section 1 of the Rules of Court is not the proper remedy for this action. He correctly clarifies that the Secretary of the Department of Foreign Affairs was not exercising a judicial or quasi-judicial function when it determined that the Madrid Protocol was an executive agreement based on the powers granted by the President in Executive Order No. 459. Nor does a Rule 65 certiorari lie against the President's accession to the Madrid Protocol on March 27, 2012. This, too, is not a judicial or quasi-judicial function. However, the procedural vehicle notwithstanding, the Rules of Court cannot limit the powers granted to this Court by the Constitution itself. Recalling Article VIII, Section 1 of the 1987 Constitution, judicial power includes "the duty . . . to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." This constitutional mandate is sparse in its qualification of the nature of the action of "any branch or instrumentality of the government." Whether this Court may limit it only to judicial or quasi-judicial actions will be constitutionally suspect. The requirement is that there should be, in a justiciable case, a clear showing that there is "grave abuse of discretion amounting to lack or excess of jurisdiction."

3. **ID.; ID.; EXECUTIVE DEPARTMENT; INTERNATIONAL AGREEMENTS; REQUIRE SENATE CONCURRENCE WHERE THE SUBJECT MATTER OF THE AGREEMENT COVERS POLITICAL ISSUES AND NATIONAL POLICIES OF A MORE PERMANENT CHARACTER.—** The ponencia proposes to declare the President's accession to the Madrid Protocol a valid executive agreement that does not need to be ratified by the Senate. Respectfully, I disagree. x x x In discussing the power of the Senate to concur with treaties entered into by the President, this Court in *Bayan v. Zamora* remarked on the significance of this legislative power: For the role of the Senate in relation to treaties is essentially legislative in character; the Senate, as an independent body possessed of its own erudite mind, has the prerogative to either accept or reject the proposed agreement, and whatever action it takes in the exercise of its wide latitude of discretion, pertains to the wisdom rather than the legality of the act. *In this sense, the Senate partakes a principal, yet delicate, role in keeping the principles of* ***separation of powers*** *and of* ***checks and balances***

*alive and vigilantly ensures that these cherished rudiments remain true to their form in a democratic government such as ours. The Constitution thus animates, through this treaty-concurring power of the Senate, a healthy system of checks and balances indispensable toward our nation's pursuit of political maturity and growth.* True enough, rudimentary is the principle that matters pertaining to the wisdom of a legislative act are beyond the ambit and province of the courts to inquire. Therefore, having an option does not necessarily mean absolute discretion on the choice of international agreement. There are certain national interest issues and policies covered by all sorts of international agreements, which may not be dealt with by the President alone. An interpretation that the executive has unlimited discretion to determine if an agreement requires senate concurrence not only runs counter to the principle of checks and balances; it may also render the constitutional requirement of senate concurrence meaningless: x x x Article VII, Section 21 does not limit the requirement of senate concurrence to treaties alone. It may cover other international agreements, including those classified as executive agreements, if: (1) they are more permanent in nature; (2) their purposes go beyond the executive function of carrying out national policies and traditions; and (3) they amend existing treaties or statutes. As long as the subject matter of the agreement covers political issues and national policies of a more permanent character, the international agreement must be concurred in by the Senate.

**APPEARANCES OF COUNSEL**

*Kapunan Garcia & Castillo Law Offices* for petitioner.
*The Solicitor General* for public respondents.

**D E C I S I O N**

**BERSAMIN, *J.*:**

In this special civil action for *certiorari* and prohibition, the Intellectual Property Association of the Philippines (IPAP) seeks to declare the accession of the Philippines to the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol)* unconstitutional on

the ground of the lack of concurrence by the Senate, and in the alternative, to declare the implementation thereof as unconstitutional because it conflicts with Republic Act No. 8293, otherwise known as the *Intellectual Property Code of the Philippines* (IP Code).[1]

We find and declare that the President's ratification is valid and constitutional because the *Madrid Protocol,* being an executive agreement as determined by the Department of Foreign Affairs, does not require the concurrence of the Senate.

**Antecedents**

The *Madrid System for the International Registration of Marks (Madrid System)*, which is the centralized system providing a one-stop solution for registering and managing marks worldwide, allows the trademark owner to file one application in one language, and to pay one set of fees to protect his mark in the territories of up to 97 member-states.[2] The *Madrid System* is governed by the *Madrid Agreement*, concluded in 1891, and the *Madrid Protocol*, concluded in 1989.[3]

The *Madrid Protocol*, which was adopted in order to remove the challenges deterring some countries from acceding to the *Madrid Agreement*, has two objectives, namely: (1) to facilitate securing protection for marks; and (2) to make the management of the registered marks easier in different countries.[4]

In 2004, the Intellectual Property Office of the Philippines (IPOPHL), the government agency mandated to administer the intellectual property system of the country and to implement the state policies on intellectual property, began considering the country's accession to the *Madrid Protocol*. However, based

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[1] *Rollo*, p. 4.

[2] Madrid – The International Trademark System, http://www.wipo.int/madrid/en/ (last visited March 31, 2016).

[3] Madrid Agreement Concerning the International Registration of Marks, http://www.wipo.int/treaties/en/registration/madrid/ (last visited March 31, 2016).

[4] Benefits of the Madrid System, http://www.wipo.int/madrid/en/madrid_benefits.html (last visited March 31, 2016).

on its assessment in 2005, the IPOPHL needed to first improve its own operations before making the recommendation in favor of accession. The IPOPHL thus implemented reforms to eliminate trademark backlogs and to reduce the turnaround time for the registration of marks.[5]

In the meanwhile, the IPOPHL mounted a campaign for information dissemination to raise awareness of the *Madrid Protocol*. It launched a series of consultations with stakeholders and various business groups regarding the Philippines' accession to the *Madrid Protocol*. It ultimately arrived at the conclusion that accession would benefit the country and help raise the level of competitiveness for Filipino brands. Hence, it recommended in September 2011 to the Department of Foreign Affairs (DFA) that the Philippines should accede to the *Madrid Protocol*.[6]

After its own review, the DFA endorsed to the President the country's accession to the *Madrid Protocol*. Conformably with its express authority under Section 9 of Executive Order No. 459 (*Providing for the Guidelines in the Negotiation of International Agreements and its Ratification*) dated November 25, 1997, the DFA determined that the *Madrid Protocol* was an executive agreement. The IPOPHL, the Department of Science and Technology, and the Department of Trade and Industry concurred in the recommendation of the DFA.[7]

On March 27, 2012, President Benigno C. Aquino III ratified the *Madrid Protocol* through an instrument of accession. The instrument of accession was deposited with the Director General of the World Intellectual Property Organization (WIPO) on April 25, 2012.[8] The *Madrid Protocol* entered into force in the Philippines on July 25, 2012.[9]

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[5] *Rollo*, pp. 170-171.

[6] *Id.* at 172-175.

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

[8] http://www.wipo.int/treaties/en/notifications/madridp-gp/treaty_madridp_gp_194.html.

[9] *Rollo*, pp. 57-58.

Petitioner IPAP, an association of more than 100 law firms and individual practitioners in Intellectual Property Law whose main objective is to promote and protect intellectual property rights in the Philippines through constant assistance and involvement in the legislation of intellectual property law,[10] has commenced this special civil action for *certiorari* and prohibition[11] to challenge the validity of the President's accession to the *Madrid Protocol* without the concurrence of the Senate. Citing *Pimentel, Jr. v. Office of the Executive Secretary*, the IPAP has averred:

Nonetheless, while the President has the sole authority to negotiate and enter into treaties, the Constitution provides a limitation to his power by requiring the concurrence of 2/3 of all the members of the Senate for the validity of the treaty entered into by him. Section 21, Article VII of the 1987 Constitution provides that "no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate." The 1935 and the 1973 Constitution also required the concurrence by the legislature to the treaties entered into by the executive.[12]

According to the IPAP, the *Madrid Protocol* is a treaty, not an executive agreement; hence, respondent DFA Secretary Albert Del Rosario acted with grave abuse of discretion in determining the *Madrid Protocol* as an executive agreement.[13]

The IPAP has argued that the implementation of the *Madrid Protocol* in the Philippines, specifically the processing of foreign trademark applications, conflicts with the IP Code,[14] whose Section 125 states:

Sec. 125. ***Representation; Address for Service.*** — If the applicant is not domiciled or has no real and effective commercial establishment

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[10] *Id.* at 5.

[11] *Id.* at 1-30.

[12] G.R. No. 158088, July 6, 2005, 462 SCRA 622, 632-633.

[13] *Rollo*, pp. 16-21.

[14] *Id.* at 21.

in the Philippines, he shall designate by a written document filed in the office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark. Such notices or services may be served upon the person so designated by leaving a copy thereof at the address specified in the last designation filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director. (Sec. 3, R.A. No. 166 a)

It has posited that Article 2 of the *Madrid Protocol* provides in contrast:

**Article 2**

**Securing Protection through International Registration**

(1) Where an application for the registration of a mark has been filed with the Office of a Contracting Party, or where a mark has been registered in the register of the Office of a Contracting Party, the person in whose name that application (hereinafter referred to as "the basic application") or that registration (hereinafter referred to as "the basic registration") stands may, subject to the provisions of this Protocol secure protection for his mark in the territory of the Contracting Parties, by obtaining the registration of that mark in the register of the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the international registration," "the International Register," "the International Bureau" and "the Organization", respectively), provided that,

(i) where the basic application has been filed with the Office of a Contracting State or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of that Contracting State, or is domiciled, or has a real and effective industrial or commercial establishment, in the said Contracting State,

(ii) where the basic application has been filed with the Office of a Contracting Organization or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of a State member of that Contracting Organization, or is domiciled, or has a real and effective industrial or commercial establishment, in the territory of the said Contracting Organization.

(2) The application for international registration (hereinafter referred to as "the international application") shall be filed with the International Bureau through the intermediary of the Office with which the basic application was filed or by which the basic registration was made (hereinafter referred to as "the Office of origin"), as the case may be.

(3) Any reference in this Protocol to an "Office" or an "Office of a Contracting Party" shall be construed as a reference to the office that is in charge, on behalf of a Contracting Party, of the registration of marks, and any reference in this Protocol to "marks" shall be construed as a reference to trademarks and service marks.

(4) For the purposes of this Protocol, "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applied.

The IPAP has insisted that Article 2 of the *Madrid Protocol* means that foreign trademark applicants may file their applications through the International Bureau or the WIPO, and their applications will be automatically granted trademark protection without the need for designating their resident agents in the country.[15]

Moreover, the IPAP has submitted that the procedure outlined in the *Guide to the International Registration of Marks* relating to representation before the International Bureau is the following, to wit:

*Rule 3(1)(a)* 09.02 References in the Regulations, Administrative Instructions or in this Guide to representation relate only to representation before the International Bureau. The questions of the need for a representative before the Office of origin or the Office of a designated Contracting Party (for example, in the event of a refusal of protection issued by such an Office), who may act as a representative in such cases and the method of appointment, are outside the scope of the Agreement, Protocol and Regulations and are governed by the law and practice of the Contracting Party concerned.

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

which procedure is in conflict with that under Section 125 of the IP Code, and constitutes in effect an amendment of the local law by the Executive Department.[16]

The IPAP has prayed that the implementation of the *Madrid Protocol* in the Philippines be restrained in order to prevent future wrongs considering that the IPAP and its constituency have a clear and unmistakable right not to be deprived of the rights granted them by the IP Code and existing local laws.[17]

In its comment in behalf of the respondents, the Office of the Solicitor General (OSG) has stated that the IPAP does not have the *locus standi* to challenge the accession to the *Madrid Protocol*; that the IPAP cannot invoke the Court's original jurisdiction absent a showing of any grave abuse of discretion on the part of the respondents; that the President's ratification of the *Madrid Protocol* as an executive agreement is valid because the *Madrid Protocol* is only procedural, does not create substantive rights, and does not require the amendment of the IP Code; that the IPAP is not entitled to the restraining order or injunction because it suffers no damage from the ratification by the President, and there is also no urgency for such relief; and the IPAP has no clear unmistakable right to the relief sought.[18]

Issues

The following issues are to be resolved, namely:

I. Whether or not the IPAP has *locus standi* to challenge the President's ratification of the *Madrid Protocol*;

II. Whether or not the President's ratification of the *Madrid Protocol* is valid and constitutional; and

III. Whether or not the *Madrid Protocol* is in conflict with the IP Code.

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[16] *Id.* at 22-24.

[17] *Id.* at 24-28.

[18] *Id.* at 177-178.

**Ruling of the Court**

The petition for *certiorari* and prohibition is without merit.

**A.**

**The issue of legal standing to sue, or *locus standi***

The IPAP argues in its reply[19] that it has the *locus standi* to file the present case by virtue of its being an association whose members stand to be injured as a result of the enforcement of the *Madrid Protocol* in the Philippines; that the injury pertains to the acceptance and approval of applications submitted through the *Madrid Protocol* without local representation as required by Section 125 of the IP Code;[20] and that such will diminish the rights granted by the IP Code to Intellectual Property Law practitioners like the members of the IPAP.[21]

The argument of the IPAP is untenable.

Legal standing refers to "a right of appearance in a court of justice on a given question."[22] According to *Agan, Jr. v. Philippine International Air Terminals Co., Inc*.,[23] standing is "a peculiar concept in constitutional law because in some cases, suits are not brought by parties who have been personally injured by the operation of a law or any other government act but by concerned citizens, taxpayers or voters who actually sue in the public interest."

The Court has frequently felt the need to dwell on the issue of standing in public or constitutional litigations to sift the worthy from the unworthy public law litigants seeking redress or relief. The following elucidation in *De Castro v. Judicial and Bar*

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[19] *Id.* at 283-307.

[20] *Id.* at 284-286.

[21] *Id.* at 23.

[22] *Black's Law Dictionary*, 941 (6th Ed. 1991).

[23] G.R. Nos. 155001, 155547, and 155661, May 5, 2003, 402 SCRA 612, 645.

*Council*[24] offers the general understanding of the context of legal standing, or *locus standi* for that purpose, *viz.*:

In public or constitutional litigations, the Court is often burdened with the determination of the *locus standi* of the petitioners due to the ever-present need to regulate the invocation of the intervention of the Court to correct any official action or policy in order to avoid obstructing the efficient functioning of public officials and offices involved in public service. It is required, therefore, that the petitioner must have a personal stake in the outcome of the controversy, for, as indicated in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*:

> **The question on legal standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Accordingly, it has been held that the interest of a person assailing the constitutionality of a statute must be direct and personal. He must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way. It must appear that the person complaining has been or is about to be denied some right or privilege to which he is lawfully entitled or that he is about to be subjected to some burdens or penalties by reason of the statute or act complained of.**

It is true that as early as in 1937, in *People v. Vera*, the Court adopted the *direct injury test* for determining whether a petitioner in a public action had *locus standi*. There, the Court held that the person who would assail the validity of a statute must have "a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result." *Vera* was followed in *Custodio v. President of the Senate, Manila Race Horse Trainers' Association v. De la Fuente, Anti-Chinese League of the Philippines v. Felix, and Pascual v. Secretary of Public Works.*

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[24] G.R. Nos. 191002, 191032, 191057, 191149, and A.M. No. 10-2-5-SC, March 17, 2010, 615 SCRA 666.

Yet, the Court has also held that the requirement of *locus standi*, being a mere procedural technicality, can be waived by the Court in the exercise of its discretion. For instance, in 1949, in *Araneta v. Dinglasan*, the Court liberalized the approach when the cases had "transcendental importance." Some notable controversies whose petitioners did not pass the *direct injury test* were allowed to be treated in the same way as in *Araneta v. Dinglasan.*

In the 1975 decision in *Aquino v. Commission on Elections,* this Court decided to resolve the issues raised by the petition due to their "far-reaching implications," even if the petitioner had no personality to file the suit. The liberal approach of *Aquino v. Commission on Elections* has been adopted in several notable cases, permitting ordinary citizens, legislators, and civic organizations to bring their suits involving the constitutionality or validity of laws, regulations, and rulings.

However, the assertion of a public right as a predicate for challenging a supposedly illegal or unconstitutional executive or legislative action rests on the theory that the petitioner represents the public in general. Although such petitioner may not be as adversely affected by the action complained against as are others, it is enough that he sufficiently demonstrates in his petition that he is entitled to protection or relief from the Court in the *vindication of a public right*.[25]

The injury that the IPAP will allegedly suffer from the implementation of the *Madrid Protocol* is imaginary, incidental and speculative as opposed to a direct and material injury required by the foregoing tenets on *locus standi*. Additionally, as the OSG points out in the comment,[26] the IPAP has misinterpreted Section 125 of the IP Code on the issue of representation. The provision only states that a foreign trademark applicant "shall designate by a written document filed in the office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark;" it does not grant anyone in particular the right to represent the foreign trademark applicant. Hence, the IPAP cannot justly claim that it will suffer irreparable injury or diminution of rights granted to it by Section 125 of the IP Code from the implementation of the *Madrid Protocol*.

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[25] *Id.* at 722-726 (bold emphasis is part of the original text).

[26] *Rollo*, p. 183.

Nonetheless, the IPAP also emphasizes that the paramount public interest involved has transcendental importance because its petition asserts that the Executive Department has overstepped the bounds of its authority by thereby cutting into another branch's functions and responsibilities.[27] The assertion of the IPAP may be valid on this score. There is little question that the issues raised herein against the implementation of the *Madrid Protocol* are of transcendental importance. Accordingly, we recognize IPAP's *locus standi* to bring the present challenge. Indeed, the Court has adopted a liberal attitude towards *locus standi* whenever the issue presented for consideration has transcendental significance to the people, or whenever the issues raised are of paramount importance to the public.[28]

**B.**

**Accession to the *Madrid Protocol* was constitutional**

The IPAP submits that respondents Executive Secretary and DFA Secretary Del Rosario gravely abused their discretion in determining that there was no need for the Philippine Senate's concurrence with the *Madrid Protocol*; that the *Madrid Protocol* involves changes of national policy, and its being of a permanent character requires the Senate's concurrence,[29] pursuant to Section 21, Article VII of the Constitution, which states that "no treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

Before going further, we have to distinguish between treaties and international agreements, which require the Senate's

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[27] *Id.* at 286-289.

[28] *Francisco, Jr. v. Nagmamalasakit na mga Manananggol ng mga Manggagawang Pilipino, Inc.*, G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, 160360, 160365, 160370, 160376, 160392, 160397, 160403, and 160405, November 10, 2003, 415 SCRA 44, 139.

[29] *Rollo*, pp. 16-21.

concurrence, on one hand, and executive agreements, which may be validly entered into without the Senate's concurrence. Executive Order No. 459, Series of 1997,[30] notes the following definitions, to wit:

**Sec. 2.** ***Definition of Terms.***

**a.** ***International agreement*** — shall refer to a contract or understanding, regardless of nomenclature, entered into between the Philippines and another government in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments.

**b.** ***Treaties*** — international agreements entered into by the Philippines which require legislative concurrence after executive ratification. This term may include compacts like conventions, declarations, covenants and acts.

**c.** ***Executive Agreements*** — similar to treaties except that they do not require legislative concurrence.

The Court has highlighted the difference between treaties and executive agreements in *Commissioner of Customs v. Eastern Sea Trading,*[31] thusly:

International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying *adjustments of detail* carrying out well-established national policies and traditions and those involving arrangements of a more or less *temporary* nature usually take the form of executive agreements.

In the Philippines, the DFA, by virtue of Section 9, Executive Order No. 459,[32] is initially given the power to determine whether

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[30] *Providing for the Guidelines in the Negotiation of International Agreements and its Ratification* (issued November 25, 1997 by President Ramos).

[31] G.R. No. L-14279, October 31, 1961, 3 SCRA 351, 356.

[32] **SEC. 9.** ***Determination of the Nature of the Agreement.*** – The Department of Foreign Affairs shall determine whether an agreement is an executive agreement or a treaty.

an agreement is to be treated as a treaty or as an executive agreement. To determine the issue of whether DFA Secretary Del Rosario gravely abused his discretion in making his determination relative to the *Madrid Protocol*, we review the jurisprudence on the nature of executive agreements, as well as the subject matters to be covered by executive agreements.

The pronouncement in *Commissioner of Customs v. Eastern Sea Trading*[33] is instructive, to wit:

x x x The concurrence of said House of Congress is required by our fundamental law in the making of "treaties" (Constitution of the Philippines, Article VII, Section 10[7]), which are, however, distinct and different from "executive agreements," which may be validly entered into without such concurrence.

> "Treaties are formal documents which require ratification with the approval of two thirds of the Senate. Executive agreements become binding through executive action *without* the need of a vote by the Senate or by Congress.
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> "x x x the right of the Executive to enter into binding agreements *without* the necessity of subsequent Congressional approval has been *confirmed by long usage*. From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, **trademark and copyright protection**, postal and navigation arrangements and the settlement of claims. *The validity of these has never been seriously questioned by our courts.*
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> x x x x x x x x x
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> **Agreements with respect to the registration of trademarks** have been concluded by the Executive with various countries under the Act of Congress of March 3, 1881 (21 Stat. 502). x x x
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> x x x x x x x x x

In this connection, Francis B. Sayre, former U.S. High Commissioner to the Philippines, said in his work on "The Constitutionality of Trade Agreement Acts":

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[33] *Supra* note 31, at 355-357.

> Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements and are no less common in our scheme of government than are the more formal instruments — treaties and conventions. They sometimes take the form of exchanges of notes and at other times that or more formal documents denominated 'agreements' or 'protocols'. The point where ordinary correspondence between this and other governments ends and agreements — whether denominated executive agreements or exchanges of notes or otherwise — begin, may sometimes be difficult of ready ascertainment. It would be useless to undertake to discuss here the large variety of executive agreements as such, concluded from time to time. Hundreds of executive agreements, other than those entered into under the trade-agreements act, have been negotiated with foreign governments. x x x It would seem to be sufficient, in order to show that the trade agreements under the act of 1934 are not anomalous in character, that they are not treaties, and that they have abundant precedent in our history, to refer to certain classes of agreements heretofore entered into by the Executive without the approval of the Senate. **They cover such subjects as the inspection of vessels, navigation dues, income tax on shipping profits, the admission of civil aircraft, customs matters, and commercial relations generally, international claims, postal matters, the registration of trademarks and copyrights, etcetera. Some of them were concluded not by specific congressional authorization but in conformity with policies declared in acts of Congress with respect to the general subject matter, such as tariff acts;** while still others, particularly those with respect of the settlement of claims against foreign governments, were concluded independently of any legislation. (Emphasis ours)

As the foregoing pronouncement indicates, the registration of trademarks and copyrights have been the subject of executive agreements entered into without the concurrence of the Senate. Some executive agreements have been concluded in conformity with the policies declared in the acts of Congress with respect to the general subject matter.

It then becomes relevant to examine our state policy on intellectual property in general, as reflected in Section 2 of our IP Code, to wit:

Section 2. ***Declaration of State Policy.*** — The State recognizes that **an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act.**

The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

**It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright**, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines.

In view of the expression of state policy having been made by the Congress itself, the IPAP is plainly mistaken in asserting that "there was no Congressional act that authorized the accession of the Philippines to the *Madrid Protocol*."[34]

Accordingly, DFA Secretary Del Rosario's determination and treatment of the *Madrid Protocol* as an executive agreement, being in apparent contemplation of the express state policies on intellectual property as well as within his power under Executive Order No. 459, are upheld. We observe at this point that there are no hard and fast rules on the propriety of entering into a treaty or an executive agreement on a given subject as an instrument of international relations. The primary consideration in the choice of the form of agreement is the parties' intent and desire to craft their international agreement in the form they so wish to further their respective interests. The matter of form takes a back seat when it comes to effectiveness and binding effect of the enforcement of a treaty or an executive agreement, inasmuch as all the parties, regardless

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[34] *Rollo*, p. 19.

of the form, become obliged to comply conformably with the time-honored principle of *pacta sunt servanda*.[35] The principle binds the parties to perform in good faith their parts in the agreements.[36]

**C.**
**There is no conflict between the *Madrid Protocol* and the IP Code.**

The IPAP also rests its challenge on the supposed conflict between the *Madrid Protocol* and the IP Code, contending that the *Madrid Protocol* does away with the requirement of a resident agent under Section 125 of the IP Code; and that the *Madrid Protocol* is unconstitutional for being in conflict with the local law, which it cannot modify.

The IPAP's contentions stand on a faulty premise. The method of registration through the IPOPHL, as laid down by the IP Code, is distinct and separate from the method of registration through the WIPO, as set in the *Madrid Protocol*. Comparing the two methods of registration despite their being governed by two separate systems of registration is thus misplaced.

In arguing that the *Madrid Protocol* conflicts with Section 125 of the IP Code, the IPAP highlights the importance of the requirement for the designation of a resident agent. It underscores that the requirement is intended to ensure that non-resident entities seeking protection or privileges under Philippine Intellectual Property Laws will be subjected to the country's jurisdiction. It submits that without such resident agent, there will be a need to resort to costly, time consuming and cumbersome extra-territorial service of writs and processes.[37]

The IPAP misapprehends the procedure for examination under the *Madrid Protocol*. The difficulty, which the IPAP illustrates,

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[35] *Bayan Muna v. Romulo*, G.R. No. 159618, February 1, 2011, 641 SCRA 244, 261.

[36] Vienna Convention on the Law on Treaties (1969), Art. 26.

[37] *Rollo*, p. 23.

is minimal, if not altogether inexistent. The IPOPHL actually requires the designation of the resident agent when it refuses the registration of a mark. Local representation is further required in the submission of the Declaration of Actual Use, as well as in the submission of the license contract.[38] The *Madrid Protocol* accords with the intent and spirit of the IP Code, particularly on the subject of the registration of trademarks. The *Madrid Protocol* does not amend or modify the IP Code on the acquisition of trademark rights considering that the applications under the *Madrid Protocol* are still examined *according to the relevant national law*. In that regard, the IPOPHL will only grant protection to a mark that meets the local registration requirements.

**WHEREFORE,** this Court **DISMISSES** the petition for *certiorari* and prohibition for lack of merit; and **ORDERS** the petitioner to pay the costs of suit.

**SO ORDERED.**

*Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, del Castillo, Perez, Reyes,* and *Caguioa, JJ.,* concur.

*Brion, Perlas-Bernabe,* and *Leonen, JJ.,* see concurring opinions.

*Jardeleza, J.,* no part.

*Mendoza, J.,* on official leave.

## SEPARATE CONCURRING OPINION

**BRION, *J.*:**

I write this Separate Opinion to emphasize my reasons for concurring with the *ponencia's* conclusion that the Philippines' accession to the Madrid Protocol through an Executive Agreement is not unconstitutional.

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[38] http://www.wipo.int/madrid/en/members/profiles/ph.html?part=misc (last visited March 31, 2016).

I believe that the time has come for this Court to definitively set concrete parameters regarding the treatment of an international agreement as a treaty or as an executive agreement. To date, we have been using the discussion on what constitutes an "executive agreement" as discussed in the case *Commissioner of Customs v. Eastern Trading*,[1] a ***1961*** case decided long ***before*** the 1987 Constitution took effect and changed the language of the provision on the effectivity and validity of international agreements in the Philippines.

This change in ***constitutional language*** calls for a clarification of what may be the subject of executive agreements that no longer need Senate concurrence to be valid and effective in the Philippines. The need is now acute, particularly in the light of the recent cases questioning the treatment of international agreements as executive agreements, such as the Enhanced Defense Cooperation Agreement (*EDCA*) and now the present Madrid Protocol case.

To avoid further confusion, the need for litigation, and the consequent international embarrassment all these can cause, we should now exercise as well our power and duty to educate the bar and the public in the course of setting standards in determining when an international agreement may be entered into as an executive agreement.

These parameters, to my mind, should reflect the shared function of the Executive and the Legislature in treaties, which in turn fits into the larger context of the separation of powers and the checks and balances that underlie the operations of our government under the Constitution.

As I will discuss below, Section 21, Article VII of the 1987 Constitution is a reflection of this setup. It is a carefully worded provision in the Constitution made to ensure that the President's prerogative in the conduct of international affairs is subject to the check and balance by the Senate, requiring that the Senate first concur in international agreements that the President enters into before they take effect in the Philippines.

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[1] G.R. No. L-14279, October 31, 1961.

Under this regime, the Madrid Protocol is valid and effective in the Philippines as an executive agreement that the President can enter into without need of Senate concurrence. The reason, stated at its simplest, is that the President was merely implementing a policy previously approved through a law by Congress, when he signed the Madrid Protocol as an executive agreement. The obligations under the Madrid Protocol are thus valid and effective in the Philippines for having been made pursuant to the exercise of the President's executive powers.

***Article VII, Section 21 of the 1987 Constitution in the context of separation of powers***

The Philippine government operates under the complementary principles of separation of powers and checks and balances. The three functions of government are concentrated in its three great branches, with each branch supreme in its own sphere: the ***Legislature*** possesses the power to create laws that are binding in the Philippines, which the ***Executive*** has the duty to implement and enforce. The ***Judiciary***, on the other hand, resolves conflicts that may arise from the implementation of these laws and, on occasion, nullifies acts of government (whether legislative or executive) that have been made with grave abuse of discretion under the Court's expanded jurisdiction in Article VIII, Section 1 of the 1987 Constitution.[2]

That each branch of government is supreme in its own sphere does not, however, mean that they no longer interact with or are isolated from one another in the exercise of their respective duties.[3]

To be sure, one branch cannot usurp the power of another without violating the principle of separation of powers, but this is not an absolute rule; rather, it is a rule that operates hand in hand with arrangements that allow the participation of

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[2] *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[3] *Ibid.*

one branch in another branch's action under the system of checks and balances that the Constitution itself provides. The Constitution in fact imposes such joint action so that one branch can check and balance the actions of the other, to ensure public accountability and guard against the tyrannical concentration of power.

Thus, Congress, while supreme in its authority to enact laws,[4] is checked and balanced in this authority through the President's veto power. Congress possesses, save for the limitations found in the Constitution, the full discretion to decide the subject matter and content of the laws it passes, but this bill, once passed by both houses of Congress, would have to be signed by the President. If the President does not approve of the bill, he can veto it and send the bill back to Congress with reasons for his disapproval. Congress, in turn, can either override the veto or simply accept the President's disapproval.[5]

The same dynamics apply to the enactment of the General Appropriations Act, which is inarguably the most important law passed by Congress every year. The GAA is subject to the President's item veto, a check-and-balance mechanism specific to appropriation bills.[6]

Note, too, that the declaration of martial law, while still a power of the President, is subject to check-and-balance mechanisms from Congress: The President is duty-bound, within forty-eight hours from declaring martial law or suspending the privilege of the writ of habeas corpus, to submit a report to Congress. Congress, voting jointly, may revoke the declaration or suspension. The President cannot set this revocation aside.[7]

The Court exercises a passive role in these scenarios, but it is duty-bound to determine (and nullify) acts of grave abuse of

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[4] Article VI, Section 1 of the 1987 Constitution.

[5] Article VI, Section 27 of the 1987 Constitution.

[6] *Ibid.*

[7] Article VII, Section 18 of the 1987 Constitution.

discretion amounting to lack or excess of jurisdiction on the part of the other branches and other government agencies.[8]

The act of entering into international agreements operate under this wider context of separation of powers and checks and balances among the three branches of government.

Without doubt, the President has the sole authority over, and is the country's chief representative in the conduct of foreign affairs. This authority includes the negotiation and ratification of international agreements: the President has full discretion (subject to the limits found in the Constitution) to negotiate and enter into international agreements in behalf of the Philippine government. But this discretion is subject to a check and balance from the legislative branch of government, that is, the Senate has to give its concurrence with an international agreement before it may be considered valid and effective in the Philippines.[9]

Notably, the veto power of the President over bills passed by Congress works in a manner similar to the need for prior Senate concurrence over international agreements. ***First***, both are triggered through the exercise by the other body of its governmental function — the President may only veto a bill after it has been passed by Congress, while the Senate may only exercise its prerogative to concur with an international agreement after it has been ratified by the President and sent to the Senate for concurrence. ***Second***, the governmental act would not take effect without the other branch's assent to it. The President would have to sign the bill, or let it lapse into law (in other words, he would have to choose not to exercise his veto prerogative) before the law could take effect. In the same light, the Senate would have to concur in the international agreement before it may be considered valid and effective in the Philippines. The similarities in these mechanisms indicate that they function as check and balance measures — to the

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[8] Article VIII, Section 1 of the 1987 Constitution; Article VII, Section 18 of the 1987 Constitution.

[9] *Pimentel, Jr. v. Office of the Executive Secretary*, G.R. No. 158088, July 6, 2005, 462 SCRA 622.

prerogative of Congress in lawmaking, and to the President's exercise of its foreign affairs powers.

We should not forget, in considering the concurrence requirement, that the need for prior concurrence from the legislative branch before international agreements become effective in the Philippines has historically been the constitutional approach starting from the 1935 Constitution.

Under the 1935 Constitution, ***the President has the "power, with the concurrence of a majority of all the members of the National Assembly, to make treaties x x x."*** The provision, Article VII, Section 11, paragraph 7 is part of the enumeration of the President's powers under Section 11, Article VII of the 1935 Constitution. This recognition clearly marked treaty making to be an executive function, but its exercise was nevertheless subject to the concurrence of the National Assembly. A subsequent amendment to the 1935 Constitution, which divided the country's legislative branch into two houses,[10] transferred the function of treaty concurrence to the Senate, and required that two-thirds of its members assent to the treaty.

By 1973, the Philippines adopted a presidential parliamentary system of government, which merged some of the functions of the Executive and Legislative branches of government in one branch.[11] Despite this change, concurrence was still seen as

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[10] See the National Assembly's Resolution No. 73 in 1940.

[11] See, Article VIII, Section 2 which provides:

SEC. 2. The Batasang Pambansa which shall be composed of not more than 200 Members unless otherwise provided by law, shall include representatives elected from the different regions of the Philippines, those elected or selected from various sectors as may be provided by law, and those chosen by the President from the members of the Cabinet. Regional representatives shall be apportioned among the regions in accordance with the number of their respective inhabitants and on the basis of a uniform and progressive ratio.

In reference to Article IX, Sections 1 to 3:

SECTION 1. There shall be a Cabinet which shall be composed of Ministers with or without portfolio appointed by the President. At least a majority of the Members of the Cabinet who are heads of ministries shall come from the Regional Representatives of the Batasang Pambansa.

necessary in the treaty-making process, as Article VIII, Section 14 required that a treaty should be first concurred in by a majority of all Members of the Batasang Pambansa before they could be considered valid and effective in the Philippines, thus:

SEC. 14. (1) Except as otherwise provided in this Constitution, no treaty shall be valid and effective unless concurred in by a majority of all the Members of the Batasang Pambansa.

This change in the provision on treaty ratification and concurrence is significant for the following reasons:

***First***, the change **clarified the effect of the lack of concurrence to a treaty**, that is, a treaty without legislative concurrence shall not be valid and effective in the Philippines.

***Second*, the change of wording also reflected the dual nature of the Philippines' approach in international relations.**[12] Under this approach, the Philippines sees international law and its international obligations from two perspectives: *first*, from the ***international plane***, where international law reigns supreme over national laws; and *second*, from the ***domestic plane***, where the international obligations and international customary laws are considered in the same footing as national laws, and do not necessarily prevail over the latter.[13] The Philippines' treatment

The Prime Minister shall be the head of the Cabinet. He shall, upon the nomination of the President from among the Members of the Batasang Pambansa, be elected by a majority of all the Members thereof.

SEC. 2. The Prime Minister and the Cabinet shall be responsible to the Batasang Pambansa for the program of government approved by the President.

SEC. 3. There shall be an Executive Committee to be designated by the President, composed of the Prime Minister as Chairman, and not more than fourteen other members, at least half of whom shall be Members of the Batasang Pambansa. The Executive Committee shall assist the President in the exercise of his powers and functions and in the performance of his duties as he may prescribe.

The Members of the Executive Committee shall have the same qualifications as those of the Members of the Batasang Pambansa.

[12] M. Magallona. "The Supreme Court and International Law: Problems and Approaches in Philippine Practice" 85 *Philippine Law Journal* 1, 2 (2010).

[13] See*: Secretary of Justice v. Hon. Lantion*, 379 Phil. 165, 212-213 (2000).

of international obligations as statutes in its domestic plane also means that they cannot contravene the Constitution, including the mandated process by which they become effective in Philippine jurisdiction.

Thus, while a treaty ratified by the President is binding upon the Philippines in the international plane, it would need the concurrence of the legislature before it can be considered as valid and effective in the Philippine domestic jurisdiction. Prior to and even without concurrence, the treaty, once ratified, is valid and binding upon the Philippines in the international plane. But in order to take effect in the Philippine domestic plane, it would have to first undergo legislative concurrence as required under the Constitution.

***Third***, that the provision had been couched in the negative emphasizes the mandatory nature of legislative concurrence before a treaty may be considered valid and effective in the Philippines.

The phrasing of Article VIII, Section 14 of the 1973 Constitution has been retained in the 1987 Constitution, except for three changes: ***First***, the Batasang Pambansa has been changed to the Senate to reflect the current setup of our legislature and our tripartite system of government. ***Second***, the vote required has been increased to two-thirds, reflective of the practice under the amended 1935 Constitution. ***Third***, the term "***international agreement***" has been added, aside from the term treaty. Thus, aside from treaties, "international agreements" now need concurrence before being considered as valid and effective in the Philippines. Thus, Article VII, Section 21 of the present Constitution reads:

SECTION 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate.

***The impact of the addition of the term "international agreement" in Section 21, Article VII of the 1987 Constitution***

In the international sphere, the term international agreement covers both a treaty, an executive agreement, or by whatever name or title an agreement may be called, as long as it is concluded between States, is in written form, and is governed by international law. Thus, the Vienna Convention on the Law on treaties provide:

> Article 2. Section 1 (a) "Treaty" means an international agreement concluded between States in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation;

The Philippines was a signatory of the Vienna Convention at the time the 1986 Constitutional Commission deliberated on and crafted the 1987 Constitution.[14] Deliberations of the Constitutional Commission even referred to the Vienna Convention on treaties while discussing what is now Article VII, Section 21.

Commissioner Sarmiento, in proposing that the term "international agreements" be deleted from Article VII, Section 21, noted that the Vienna Convention provides that treaties are international agreements, hence, including the term international agreement is unnecessary and duplicative.[15]

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[14] The Philippines deposited its instrument of ratification of the Vienna Convention on November 15, 1972.

[15] See the following discussion during the deliberations of the 1986 Constitutional Commission:

MR. SARMIENTO: I humbly propose an amendment to the proposed resolution of my Committee and this is on page 9, Section 20, line 7, which is to delete the words "or international agreement." May I briefly explain.

First, Article VII of the 1935 Constitution does not mention international agreement. Second, the Vienna Convention on the Law on Treaties states that a treaty is an international agreement. Third, the very source of this provision, the United States Constitution, does not speak of international agreement; it only speaks of treaties. So with that brief explanation, may I ask the Committee to consider our amendment.

Commissioners Guingona, Villacorta and Aquino are supportive of this amendment.

THE PRESIDENT: What does the Committee say?

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However, this proposal was withdrawn, as several commissioners insisted on including the term "international agreement" as a catch-all phrase for agreements that are international and more permanent in nature. It became apparent from the deliberations that the ***commissioners consider a treaty to be a kind of international agreement*** that serves as a contract between its parties and is part of municipal law. Thus, it would appear that the inclusion of the term "international agreement" in Section 21, Article VII of the 1987 Constitution was meant to ensure that an international agreement, regardless of its designation, should first be concurred in by the Senate before it can be considered valid and effective in the Philippines.[16]

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[16] In response to Commissioner Sarmiento's suggestion, Commissioner Concepcion offered the following insight:

MR. CONCEPCION: Madam President.

THE PRESIDENT: Commissioner Concepcion is recognized.

MR. CONCEPCION: Thank you, Madam President.

International agreements can become valid and effective upon ratification of a designated number of parties to the agreement. But what we can say here is that it shall not be valid and effective as regards the Philippines. For instance, there are international agreements with 150 parties and there is a provision generally requiring say, 50, to ratify the agreement in order to be valid; then only those who ratified it will be bound. Ratification is always necessary in order that the agreement will be valid and binding.

MR. SARMIENTO: Do I take it to mean that international agreements should be retained in this provision?

MR. CONCEPCION: Yes. But when we say "shall not be valid and effective, we say AS REGARDS THE PHILIPPINES.

MR. SARMIENTO: So, the Commissioner is for the inclusion of the words "AS REGARDS THE PHILIPPINES"?

MR. CONCEPCION: Yes. No agreement will be valid unless the Philippines ratifies it.

MR. SARMIENTO: So may I know the final position of the Committee with respect to my amendment by deletion?

MR. CONCEPCION: I would say "No treaty or international agreement shall be valid and effective AS REGARDS THE PHILIPPINES unless concurred in by at least two-thirds of all the members of the Senate."

MR. SARMIENTO: If that is the position of the Chief Justice who is an expert on international law . . .

***Executive Agreements as an exception to the need for legislative concurrence in international agreements***

Hand in hand with the above considerations of Section 21, Article VII, executive agreements have been recognized through jurisprudence and by the provisions of the 1973 and the 1987 Constitutions themselves.

Although the 1935 Constitution did not expressly recognize the existence and validity of executive agreements, jurisprudence and practice under it did. Thus, the *Commissioner of Customs v. Eastern Sea Trading*, a 1961 case, recognized the capacity of the President to enter into executive agreements and its validity under Philippine law,[17] *viz.*:

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MR. CONCEPCION: I am not an expert.

MR. SARMIENTO: . . . then I will concede. I think Commissioner Aquino has something to say about Section 20.

THE PRESIDENT: This particular amendment is withdrawn.

MS. AQUINO: Madam President, first I would like a clarification from the Committee. We have retained the words "international agreement" which I think is the correct judgment on the matter because an international agreement is different from a treaty. ***A treaty is a contract between parties which is in the nature of international agreement and also a municipal law in the sense that the people are bound.*** So there is a conceptual difference. However, I would like to be clarified if the international agreements include executive agreements.

MR. CONCEPCION: That depends upon the parties. All parties to these international negotiations stipulate the conditions which are necessary for the agreement or whatever it may be to become valid or effective as regards the parties. II RECORD, CONSTITUTIONAL COMMISSION (31 July 1986).

[17] The full discussion on executive agreements in *Collector of Customs v. Eastern Shipping* reads as:

The Court of Tax Appeals entertained doubts on the legality of the executive agreement sought to be implemented by Executive Order No. 328, owing to the fact that our Senate had not concurred in the making of said executive agreement. The concurrence of said House of Congress is required by our fundamental law in the making of "treaties" (Constitution of the Philippines, Article VII, Section 10 [7]), which are, however, distinct and different from "executive agreements," which may be validly entered into without such concurrence.

Treaties are formal documents which require ratification with the approval of two-thirds of the Senate. Executive agreements become binding through executive action without the need of a vote by the Senate or by Congress.

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. . . the right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts.

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Agreements with respect to the registration of trade-marks have been concluded by the Executive with various countries under the Act of Congress of March 3, 1881 (21 Stat. 502). Postal conventions regulating the reciprocal treatment of mail matters, money orders, parcel post, etc., have been concluded by the Postmaster General with various countries under authorization by Congress beginning with the Act of February 20, 1792 (1 Stat. 232, 239). Ten executive agreements were concluded by the President pursuant to the McKinley Tariff Act of 1890 (26 Stat. 567, 612), and nine such agreements were entered into under the Dingley Tariff Act 1897 (30 Stat. 151, 203, 214). A very much larger number of agreements, along the lines of the one with Rumania previously referred to, providing for most-favored-nation treatment in customs and related matters have been entered into since the passage of the Tariff Act of 1922, not by direction of the Act but in harmony with it.

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International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.

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Furthermore, the United States Supreme Court has expressly recognized the validity and constitutionality of executive agreements entered into without Senate approval. (39 Columbia Law Review, pp. 753-754) (See, also, *U.S.*

x x x the right of the Executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history we have entered into executive agreements covering such subjects as commercial and consular relations, most-favored-nation rights, patent rights, trademark and copyright protection, postal and navigation

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*v. Curtis-Wright Export Corporation*, 299 U.S. 304, 81 L. ed. 255; *U.S. v. Belmont*, 301 U.S. 324, 81 L. ed. 1134; *U.S. v. Pink*, 315 U.S. 203, 86 L. ed. 796; *Ozanic v. U.S.*, 188 F. 2d. 288; Yale Law Journal, Vol. 15, pp. 1905-1906; California Law Review, Vol. 25, pp. 670-675; Hyde on International Law [Revised Edition], Vol. 2, pp. 1405, 1416-1418; Willoughby on the U.S. Constitutional Law, Vol. I [2d ed.], pp. 537-540; Moore, *International Law Digest*, Vol. V, pp. 210-218; Hackworth, *International Law Digest,* Vol. V, pp. 390-407). (Emphasis supplied.)

In this connection, Francis B. Sayre, former U.S. High Commissioner to the Philippines, said in his work on "The Constitutionality of Trade Agreement Acts":

Agreements concluded by the President which fall short of treaties are commonly referred to as executive agreements and are no less common in our scheme of government than are the more formal instruments — treaties and conventions. They sometimes take the form of exchanges of notes and at other times that of more formal documents denominated "agreements" time or "protocols." The point where ordinary correspondence between this and other governments ends and agreements — whether denominated executive agreements or exchanges of notes or otherwise — begin, may sometimes be difficult of ready ascertainment. It would be useless to undertake to discuss here the large variety of executive agreements as such, concluded from time to time. Hundreds of executive agreements, other than those entered into under the trade-agreements act, have been negotiated with foreign governments. . . . It would seem to be sufficient, in order to show that the trade agreements under the act of 1934 are not anomalous in character, that they are not treaties, and that they have abundant precedent in our history, to refer to certain classes of agreements heretofore entered into by the Executive without the approval of the Senate. They cover such subjects as the inspection of vessels, navigation dues, income tax on shipping profits, the admission of civil aircraft, customs matters, and commercial relations generally, international claims, postal matters, the registration of trademarks and copyrights, etcetera. Some of them were concluded not by specific congressional authorization but in conformity with policies declared in acts of Congress with respect to the general subject matter, such as tariff acts; while still others, particularly those with respect of the settlement of claims against foreign governments, were concluded independently of any legislation." (39 Columbia Law Review, pp. 651, 755.)

arrangements and the settlement of claims. The validity of these has never been seriously questioned by our courts.

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The use of executive agreements could presumably be the reason for its subsequent express recognition in subsequent constitutions. Article X, Section 2 of the 1973 Constitution[18] included executive agreements as a subject matter of judicial review, and this is repeated in Article VIII, Section 5 (2)[19] of the 1987 Constitution.

Article X Section 2, (1) of the 1973 Constitution provided that:

SEC. 2. x x x

(1) All cases involving the constitutionality of a treaty, executive agreement, or law shall be heard and decided by the Supreme Court en banc, and no treaty, ***executive agreement***, or law may be declared unconstitutional without the concurrence of at least ten Members. All other cases, which under its rules are required to be heard en banc, shall be decided with the concurrence of at least eight Members.

Article VIII, Section 5 (2) of the 1987 Constitution, on the other hand, states:

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[18] SEC. 2. (1) The Supreme Court shall be composed of a Chief Justice and fourteen Associate Justices. It may sit *en banc* or in two divisions.

(2) All cases involving the constitutionality of a treaty, ***executive agreement***, or law shall be heard and decided by the Supreme Court *en banc*, and no treaty, executive agreement, or law may be declared unconstitutional without the concurrence of at least ten Members. All other cases, which under its rules are required to be heard *en banc*, shall be decided with the concurrence of at least eight Members.

[19] (2) Review, revise, reverse, modify, or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of ***any treaty, international or executive agreement***, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

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(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) All cases in which the constitutionality or validity of any treaty, international or ***executive agreement***, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

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The deliberations of the 1986 Constitutional Commission also show that the framers recognize that the President may enter into executive agreements, which are valid in the Philippines even without Senate concurrence:

MS. AQUINO: Madam President, first I would like a clarification from the Committee. We have retained the words "international agreement" which I think is the correct judgment on the matter because an international agreement is different from a treaty. ***A treaty is a contract between parties which is in the nature of international agreement and also a municipal law in the sense that the people are bound. So there is a conceptual difference.*** However, I would like to be clarified if the international agreements include executive agreements.

MR. CONCEPCION: That depends upon the parties. All parties to these international negotiations stipulate the conditions which are necessary for the agreement or whatever it may be to become valid or effective as regards the parties.

MS. AQUINO: Would that depend on the parties or would that depend on the nature of the executive agreement? According to common usage, there are two types of executive agreement: one is purely proceeding from an executive act which affects external relations independent of the legislative and the other is an executive act in pursuance of legislative authorization. The first kind might take the form of just conventions or exchanges of notes or protocol while the other, which would be pursuant to the legislative authorization, may be in the nature of commercial agreements.

MR. CONCEPCION: Executive agreements are generally made to implement a treaty already enforced or to determine the details

for the implementation of the treaty. We are speaking of executive agreements, not international agreements.

MS. AQUINO: I am in full agreement with that, except that it does not cover the first kind of executive agreement which is just protocol or an exchange of notes and this would be in the nature of reinforcement of claims of a citizen against a country, for example.

MR. CONCEPCION: The Commissioner is free to require ratification for validity insofar as the Philippines is concerned.

MS. AQUINO: It is my humble submission that we should provide, unless the Committee explains to us otherwise, an explicit proviso which would except executive agreements from the requirement of concurrence of two-thirds of the Members of the Senate. Unless I am enlightened by the Committee I propose that tentatively, the sentence should read, "No treaty or international agreement EXCEPT EXECUTIVE AGREEMENTS shall be valid and effective."

FR. BERNAS: I wonder if a quotation from the Supreme Court decision might help clarify this:

The right of the executive to enter into binding agreements without the necessity of subsequent Congressional approval has been confirmed by long usage. From the earliest days of our history, we have entered into executive agreements covering such subjects as commercial and consular relations, most favored nation rights, patent rights, trademark and copyright protection, postal and navigation arrangements and the settlement of claims. The validity of this has never been seriously questioned by our Courts.

Agreements with respect to the registration of trademarks have been concluded by the executive of various countries under the Act of Congress of March 3, 1881 (21 Stat. 502). x x x International agreements involving political issues or changes of national policy and those involving international agreements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail, carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.

MR. ROMULO: Is the Commissioner, therefore, excluding the executive agreements?

FR. BERNAS: ***What we are referring to, therefore, when we say international agreements which need concurrence by at least two-thirds are those which are permanent in nature.***

MS. AQUINO: And it may include commercial agreements which are executive agreements essentially but which are proceeding from the authorization of Congress. If that is our understanding, then I am willing to withdraw that amendment.

FR. BERNAS: If it is with prior authorization of Congress, then it does not need subsequent concurrence by Congress.

MS. AQUINO: In that case, I am withdrawing my amendment.

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MR. GUINGONA: I am not clear as to the meaning of "executive agreements" because I heard that these executive agreements must rely on treaties. In other words, there must first be treaties.

MR. CONCEPCION: No, I was speaking about the common use, as executive agreements being the implementation of treaties, details of which do not affect the sovereignty of the State.

MR. GUINGONA: ***But what about the matter of permanence, Madam President? Would 99 years be considered permanent? What would be the measure of permanency? I do not conceive of a treaty that is going to be forever, so there must be some kind of a time limit.***

MR. CONCEPCION: ***I suppose the Commissioner's question is whether this type of agreement should be included in a provision of the Constitution requiring the concurrence of Congress.***

MR. GUINGONA: It depends on the concept of the executive agreement of which I am not clear. If the executive agreement partakes of the nature of a treaty, then it should also be included.

MR. CONCEPCION: Whether it partakes or not of the nature of a treaty, it is within the power of the Constitutional Commission to require that.

MR. GUINGONA: Yes. That is why I am trying to clarify whether the words "international agreements" would include executive agreements.

MR. CONCEPCION: No, not necessarily; generally no.

MR. TINGSON: Madam President.

THE PRESIDENT: Commissioner Tingson is recognized.

MR. TINGSON: If the Floor Leader would allow me, I have only one short question.

MR. ROMULO: I wish to be recognized first. I have only one question. ***Do we take it, therefore, that as far as the Committee is concerned, the term "international agreements" does not include the term "executive agreements" as read by the Commissioner in that text?***

FR. BERNAS: ***Yes***.[20]

Thus, despite the attempt in the 1987 Constitution to ensure that all international agreements, regardless of designation, be the subject of Senate concurrence, the Constitution likewise acknowledged that the President can enter into executive agreements that the Senate no longer needs to concur in.

An ***executive agreement***, when examined under the definition of what constitutes a ***treaty*** under the Vienna Convention on Treaties, falls within the Convention's definition. An executive agreement as used in Philippine law is definitely "an international agreement concluded between States in written form and governed by International Law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation[.]"

The confusion that the seemingly differing treatment of executive agreement brings, however, is more apparent than real when it is considered that both instruments — a treaty and an executive agreement — both have constitutional recognition that can be reconciled: an executive agreement is an exception to the Senate concurrence requirement of Article VII, Section 21 of the 1987 Constitution; it is an international agreement that does not need Senate concurrence to be valid and effective in the Philippines.

Its exceptional character arises from the reality that the Executive possesses the power and duty to execute and implement laws which, when considered together with the President's foreign affairs powers, authorizes the President to agree to international obligations that he can already implement as Chief Executive of the Philippine government. In other words, the

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[20] II RECORD, CONSTITUTIONAL COMMISSION 544-546 (31 July 1986).

President can ratify as executive agreements those obligations that he can already *execute and implement* because they already carry *prior legislative authorization*, or have already gone through the treaty-making process under Article VII, Section 21 of the 1987 Constitution.[21]

In these lights, executive agreements are a function of the President's duty to execute the laws faithfully. They trace their validity from existing laws or treaties that have been authorized by the legislative branch of government. They implement laws and treaties.[22]

In contrast, treaties are international agreements that need concurrence from the Senate. They do not originate solely from the President's duty as the executor of the country's laws, but from the shared function that the Constitution mandated between the President and the Senate under Article VII, Section 21 of the 1987 Constitution.[23]

Between the two, a treaty exists on a higher plane as it carries the authority of the President and the Senate. Treaties, which have the impact of statutory law in the Philippines, can amend or prevail over prior statutory enactments.[24] Executive agreements — which are at the level of implementing rules and regulations or administrative orders in the domestic sphere — have no such effect. These cannot contravene or amend statutory enactments and treaties.[25]

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[21] See *J*. Brion's Dissenting Opinion in *Saguisag v. Executive Secretary*, G.R. No. 212426, January 12, 2016.

[22] *Ibid.*

[23] *Ibid.*

[24] See *Secretary of Justice v. Lantion*, 379 Phil. 165 (2004); *Bayan Muna v. Romulo,* 656 Phil. 246 (2011).

[25] See *Bayan Muna v. Romulo*, 656 Phil. 246 (2011); *Nicolas v. Romulo*, 598 Phil. 262 (2009); *Gonzales v. Hechanova*, 118 Phil. 1065 (1963); CIVIL CODE, Art. 7; *J*. Brion's Dissenting Opinion in *Saguisag v. Executive Secretary*; G.R. No. 212426, January 12, 2016 and *J*. Carpio's Dissenting Opinion in *Suplico v. National Economic Development Authority,* G.R. No. 178830, 14 July 2008, 558 SCRA 329, 360-391.

This difference in impact is based on their origins: since a treaty has the approval of both the President and the Senate, it has the same impact as a statute. In contrast, since an executive agreement springs from the President's power to execute laws, it cannot amend or violate existing treaties, and must be in accord with and in pursuant to laws and treaties.[26]

Accordingly, ***the intended effect of an international agreement determines its form.***

When an international agreement merely implements an existing agreement, it is properly in the form of an executive agreement. In contrast, when an international agreement involves the introduction of a new subject matter or an amendment of existing agreements or laws, then it should properly be in the form of a treaty. Otherwise, the enforceability of this international agreement in the domestic sphere should be carefully examined, as it carries no support from the legislature. To emphasize, should an executive agreement amend or contravene statutory enactments and treaties, then it is void and cannot be enforced in the Philippines; the Executive who issued it had no authority to issue an instrument that is contrary to or outside of a legislative act or a treaty.[27]

In this sense, an executive agreement that creates new obligations or amends existing ones, has been issued with grave abuse of discretion amounting to a lack of or excess of jurisdiction, and can be judicially nullified through judicial review.

***The obligations found in the Madrid Protocol are within the Executive's power to implement, and may be the subject of an executive agreement.***

Applying these standards to the contents of the Madrid Protocol, I find that the obligations in this international agreement

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[26] See *J.* Brion's Dissenting Opinion in *Saguisag v. Executive Secretary*, G.R. No. 212426, January 12, 2016.

[27] See *supra* note 25.

may be the subject of an executive agreement. **The Madrid Protocol facilitates the Philippines' entry to the Madrid System.**[28] **Under the Madrid System, a person can register his trademark internationally by filing for an international registration of his trademark in one of the contracting parties (*CP*) under the Madrid System. Once a person has filed for or acquired a trademark with the IPO in his country of origin (that is also a CP), he can file for the international recognition of his trademark with the same office.**[29]

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[28] See Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

[29] Article 2 of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks provides:

Article 2

Securing Protection through International Registration

(1) Where an application for the registration of a mark has been filed with the Office of a Contracting Party, or where a mark has been registered in the register of the Office of a Contracting Party, the person in whose name that application (hereinafter referred to as "the basic application") or that registration (hereinafter referred to as "the basic registration") stands may, subject to the provisions of this Protocol, secure protection for his mark in the territory of the Contracting Parties, by obtaining the registration of that mark in the register of the International Bureau of the World Intellectual Property Organization (hereinafter referred to as "the international registration," "the International Register," "the International Bureau" and "the Organization," respectively), provided that,

(i) where the basic application has been filed with the Office of a Contracting State or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of that Contracting State, or is domiciled, or has a real and effective industrial or commercial establishment, in the said Contracting State,

(ii) where the basic application has been filed with the Office of a Contracting Organization or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of a State member of that Contracting Organization, or is domiciled, or has a real and effective industrial or commercial establishment, in the territory of the said Contracting Organization.

(2) The application for international registration (hereinafter referred to as "the international application") shall be filed with the International Bureau through the intermediary of the Office with which the basic application

The CP is then obligated to forward the request to the World Intellectual Property Organization's (*WIPO*) International Bureau, which will then forward it to the other CPs where the person has applied for trademark recognition.[30] The IPO in these countries would then determine whether the trademark may be registered under the laws of their country.[31]

Thus, a foreign national may, in applying for an international registration of his trademark, include the Philippines as among

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was filed or by which the basic registration was made (hereinafter referred to as "the Office of origin"), as the case may be.

(3) Any reference in this Protocol to an "Office" or an "Office of a Contracting Party" shall be construed as a reference to the office that is in charge, on behalf of a Contracting Party, of the registration of marks, and any reference in this Protocol to "marks" shall be construed as a reference to trademarks and service marks.

(4) For the purposes of this Protocol, "territory of a Contracting Party" means, where the Contracting Party is a State, the territory of that State and, where the Contracting Party is an intergovernmental organization, the territory in which the constituting treaty of that intergovernmental organization applies.

[30] *Ibid.*

[31] Article 4 in relation to Article 5 of the Madrid Agreement Concerning the International Registration of Marks; in particular, the language of paragraph 1, Article 5 provides:

(1) ***Where the applicable legislation so authorizes***, any Office of a Contracting Party which has been notified by the International Bureau of an extension to that Contracting Party, under Article 3ter(1) or (2), of the protection resulting from the international registration ***shall have the right to declare in a notification of refusal that protection cannot be granted in the said Contracting Party to the mark which is the subject of such extension***. Any such refusal can be based only on the grounds which would apply, under the Paris Convention for the Protection of Industrial Property, in the case of a mark deposited direct with the Office which notifies the refusal. However, protection may not be refused, even partially, by reason only that the applicable legislation would permit registration only in a limited number of classes or for a limited number of goods or services.

*See* also IPOPHIL Office Order No. 139, Series of 2012, the Philippine Regulations Implementing the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.

the jurisdictions with which he seeks to register his trademark. Upon receipt of his application from the IPO of his country of origin, the WIPO would forward the application to the Philippine Intellectual Property Office (*IPOPHIL*). The IPOPHIL would then conduct a substantive examination of the application, and determine whether the trademark may be registered under Philippine law.[32]

Note, at this point, that the Madrid Protocol does not replace the procedure for the registration of trademarks under the IP Code; neither does it impose or change the substantive requirements for the grant of a trademark. Whether through the mechanism under the Madrid Protocol or the IP Code, the requirements for a successful trademark registration remain the same.

In particular, the form for "Application for International Registration Governed Exclusively by the Madrid Protocol"[33] requires most (except for the name of the domestic representative) of the information necessary for an application for trademark registration under Section 124 of the IP Code.[34] Upon receipt

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[32] *See* IPOPHIL Office Order No. 139, Series of 2012.

[33] MM2 Form for the Application for International Registration of Governed Exclusively by the Madrid Protocol, accessed at http://www.wipo.int/export/sites/www/madrid/en/forms/docs/form_mm2.pdf.

[34] Sec. 124. Requirements of Application. —

124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:

(a) A request for registration;

(b) The name and address of the applicant;

(c) The name of a State of which the applicant is a national or where he has domicile; and the name of a State in which the applicant has a real and effective industrial or commercial establishment, if any;

(d) Where the applicant is a juridical entity, the law under which it is organized and existing;

(e) The appointment of an agent or representative, if the applicant is not domiciled in the Philippines;

(f) Where the applicant claims the priority of an earlier application, an indication of:

(i) The name of the State with whose national office the earlier application was filed or it filed with an office other than a national office, the name of that office,

and examination of this application, the IPOPHIL still possesses the discretion to grant or deny the same.[35]

The applicant or registrant (whether through the Madrid Protocol or the traditional means under the IP Code) would also still have to file a declaration of actual use of mark with evidence to that affect within three years from the filing date of the application, otherwise, its registration shall be cancelled.[36] The trademark registration filed through the Madrid Protocol is valid for ten years from the date of registration, the same period of protection granted to registrants under the IP Code.[37]

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(ii) The date on which the earlier application was filed, and
(iii) Where available, the application number of the earlier application;
(g) Where the applicant claims color as a distinctive feature of the mark, a statement to that effect as well as the name or names of the color or colors claimed and an indication, in respect of each color, of the principal parts of the mark which are in that color;
(h) Where the mark is a three-dimensional mark, a statement to that effect;
(i) One or more reproductions of the mark, as prescribed in the Regulations;
(j) A transliteration or translation of the mark or of some parts of the mark, as prescribed in the Regulations;
(k) The names of the goods or services for which the registration is sought, grouped according to the classes of the Nice Classification, together with the number of the class of the said Classification to which each group of goods or services belongs; and
(l) A signature by, or other self-identification of, the applicant or his representative.

124.2. The applicant or the registrant shall file a declaration of actual use of the mark with evidence to that effect, as prescribed by the Regulations within three (3) years from the filing date of the application. Otherwise, the application shall be refused or the mark shall be removed from the Register by the Director.

124.3. One (1) application may relate to several goods and/or services, whether they belong to one (1) class or to several classes of the Nice Classification.

124.4. If during the examination of the application, the Office finds factual basis to reasonably doubt the veracity of any indication or element in the application, it may require the applicant to submit sufficient evidence to remove the doubt. (Sec. 5, R.A. No. 166a)

[35] See Chapter 3 of IPOPHIL Office Order No. 139, Series of 2012.

[36] Rule 20, IPOPHIL Office Order No. 139, Series of 2012.

[37] Rule 15, IPOPHIL Office Order No. 139, Series of 2012 provides:

The ***net effect of implementing the Madrid Protocol is allowing the WIPO's International Bureau to forward an application before the IPOPHIL on behalf of the foreign national that filed for an international registration before the WIPO*** and chose to include the Philippines among the countries with which it intends to register its mark. This obligation of recognizing trademark registration applications filed through the WIPO's International Bureau may be entered into and implemented by the Executive without subsequent Senate concurrence.

As the *ponencia* has pointed out, Congress has made it the policy of the State to streamline administrative procedures of registering patents, trademarks, and copyrights. This declaration of the State's policy, when considered with the inherent and necessary power of the executive to draft its implementing rules and regulations in the implementation of laws, sufficiently allows the drafting of rules that would streamline the administrative procedure for the registration of trademarks by foreign nationals. These rules, of course, must not contradict or add to the law that it seeks to implement, that is, the procedure provided in the IP Code.

Since the Executive is already authorized to create implementing rules and regulations that streamline the trademark registration process provided under the IP Code, then the Philippines' obligation under the Madrid Protocol may be implemented without subsequent Senate concurrence. This obligation to recognize applications filed through the WIPO already has prior legislative authorization, given that the Executive can, in the course of implementing Section 124 of the IP Code, draft implementing rules that streamline the procedure without changing its substantive aspects.

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Rule 15. Effects of an International Registration. —

(1) An ***international registration designating the Philippines shall have the same effect,*** from the date of the international registration, as if an application for the registration of the mark had been filed directly with the IPOPHIL under the IP Code and the TM Regulations. x x x

As I have already pointed out, the Madrid Protocol merely allows the WIPO's International Bureau to file an application before the IPOPHIL on behalf of the foreign national that filed for an international registration before the WIPO. This practice is not prohibited under the IP Code, and may even be arguably encouraged under the declaration of state policy[38] in the IP Code. Notably, the IP Code does not require personal filing of the application for trademark registration; neither does it prohibit the submission of the application on behalf of an applicant.[39]

Indeed, the registration process under the Madrid Protocol would, in effect, dispense with the requirement of naming a domestic representative for foreign nationals not domiciled in the Philippines upon filing his application for trademark registration, as mandated in Section 124 of the IP Code. The domestic representative requirement is further explained in Section 125, *viz.*:

Sec. 125. Representation; Address for Service. — If the applicant is not domiciled or has no real and effective commercial establishment in the Philippines, he shall designate by a written document filed in the office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark. Such notices or services may be served upon the person so designated by

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[38] Section 2 of the IP Code provides:

SECTION 2. Declaration of State Policy. — The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such periods as provided in this Act. The use of intellectual property bears a social function. To this end, the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good. ***It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright***, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines. (n)

[39] *See* Section 124 of the IP Code enumerating the requirements for an application of trademark.

leaving a copy thereof at the address specified in the last designation filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Director. (Sec. 3, R.A. No. 166a)

The domestic representative requirement, however, is not entirely dispensed with by the operation of the Madrid Protocol. A domestic representative is still required to file a certificate of actual use of the trademark within three years from registration, so that the trademark applied for would not be cancelled.[40]

In the same light, applicants seeking to register their trademark license would also need a domestic representative in submitting a copy of the license agreement showing compliance with national requirements, within two months from the date of registration with the International Bureau.[41]

A domestic representative is also necessary should there be any opposition to the trademark registration or a provisional refusal thereof.[42]

Thus, a domestic representative is still integral to the process of registering a trademark in the Philippines. All foreign nationals not domiciled in the Philippines would still have to name a domestic representative in the course of his application for registration, otherwise, his trademark would, at the very least, be cancelled after three years of non-use. The Madrid Protocol, in streamlining the procedure for registering trademarks of foreign

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[40] *See* Rule 20, IPOPHIL Office Order No. 139, Series of 2012; Miscellaneous information provided by the World Intellectual Property Office Website on the Philippines' procedure in implementing the Madrid Protocol, accessed at http://www.wipo.int/madrid/en/members/profiles/ph.html? part=misc.

[41] *See* Rule 18, IPOPHIL Office Order No. 139, Series of 2012; Miscellaneous information provided by the World Intellectual Property Office Website on the Philippines' procedure in implementing the Madrid Protocol, accessed at http://www.wipo.int/madrid/en/members/profiles/ph.html? part=misc.

[42] *See* Rule 9, IPOPHIL Office Order No. 139, Series of 2012; Miscellaneous information provided by the World Intellectual Property Office Website on the Philippines' procedure in implementing the Madrid Protocol, accessed at http://www.wipo.int/madrid/en/members/profiles/ph.html?part=misc.

nationals, in effect directed the domestic representative's participation where necessary and merely postponed the naming of a domestic representative requirement under Section 124 of the IP Code. The Protocol did not all together forego with it.

Lastly, it does not escape us in reviewing the Executive's act of treating the Madrid Protocol as an executive agreement that the petition reached us through the Court's expanded jurisdiction. The petition for *certiorari* and prohibition challenging the constitutionality of the Madrid Protocol must thus be examined under the lens of grave abuse of discretion; that is, the executive must have acted so whimsically and capriciously that it amounted to an evasion of a positive duty or a refusal to perform a duty required by law.[43]

As I have earlier pointed out, the Executive's inherent capacity to enact implementing rules for the administrative procedure of registering trademarks, when construed together with the Congress' declared policy of streamlining administrative procedures for trademark registration, sufficiently allows the Executive to obligate the Philippine government to recognize trademark applications filed with the WIPO International Bureau. This obligation no longer needs Senate approval to be effective in the Philippines, as it already has prior legislative authorization that the Executive has the power to implement.

Thus, the Executive did not have a positive duty (though merely an option) to treat the Madrid Protocol as a treaty that should be submitted to the Senate for concurrence, and did not gravely abuse its discretion in treating the Protocol as an executive agreement.

**WHEREFORE, premises considered, I join the *ponencia* in dismissing the present petition.**

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[43] Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law *Land Bank of the Philippines v. Court of Appeals,* 456 Phil. 755, 786 (2003).

## CONCURRING OPINION

**PERLAS-BERNABE, *J.*:**

I concur.

However, I wish to briefly expound on the reasons as to why the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*[1] (*Madrid Protocol*) should be classified as an executive agreement and not a treaty. Therefore, it need not be concurred in by at least two-thirds of all the Members of the Senate in order to be valid and effective.[2]

Section 122 of Republic Act No. (RA) 8293[3] or the "Intellectual Property Code of the Philippines" (IP Code) provides that "[t]he rights in a mark shall be acquired through **registration** made validly in accordance with the provisions of this law."

For applicants not domiciled in the Philippines, Section 124 of the IP Code requires "[t]he appointment of an agent or representative":

> Section 124. Requirements of application. — 124.1. The application for the registration of the mark shall be in Filipino or in English and shall contain the following:
>
> x x x x x x x x x
>
> (e) The appointment of an agent or representative, if the applicant is not domiciled in the Philippines;
>
> x x x x x x x x x

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[1] Adopted at Madrid on June 27, 1989, as amended on October 3, 2006 and on November 12, 2007. See <http://www.wipo.int/wipolex/en/wipo_treaties/text.jsp?file_id=283484> (last accessed on April 6, 2016).

[2] Section 21, Article VII of the 1987 Constitution reads: "Section 21. No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate."

[3] Entitled "AN ACT PRESCRIBING THE INTELLECTUAL PROPERTY CODE AND ESTABLISHING THE INTELLECTUAL PROPERTY OFFICE, PROVIDING FOR ITS POWERS AND FUNCTIONS, AND FOR OTHER PURPOSES" (January 1, 1998).

The rationale therefor is explicated in Section 125 of the same law: it is through the resident agent or representative that notices and processes in the proceedings are duly served upon the person of the non-domiciliary:

> Section 125. Representation; Address for Service. — If the applicant is not domiciled or has no real and effective commercial establishment in the Philippines, he shall designate by a written document filed in the office, the name and address of a Philippine resident who may be served notices or process in proceedings affecting the mark. x x x.

However, through the Philippines' accession to the Madrid Protocol and hence, adoption of the Madrid System for the International Registration of Marks (Madrid System),[4] an applicant who is not domiciled in the Philippines but a national of a Contracting Party is now given the option to file his application in the IP Office of his own home country and thereupon, secure protection for his mark. Articles 2 and 3 of the Madrid Protocol pertinently provide for the basic procedure and effect of registering through the Madrid System:

> Article 2
> Securing Protection through International Registration
>
> (1) Where an **application for the registration of a mark has been filed with the Office of a Contracting Party, or where a mark has been registered in the register of the Office of a Contracting Party,** the person in whose name that application (hereinafter referred to as "the basic application") or that registration (hereinafter referred to as "the basic registration") stands may, subject to the provisions of this Protocol, **secure protection for his mark in the territory of the Contracting Parties, by obtaining the registration of that mark in the register of the International Bureau of the World Intellectual Property Organization** (hereinafter referred to as "the international

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[4] The Madrid System for the International Registration of Marks is governed by the Madrid Agreement, concluded in 1891, and the Protocol relating to that Agreement, concluded in 1989. The system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated Contracting Parties. <http://www.wipo.int/treaties/en/registration/madrid_protocol/> (last visited April 6, 2016).

registration," "the International Register," "the International Bureau" and "the Organization," respectively), provided that,

(i) where the basic application has been filed with the Office of a Contracting State or where the basic registration has been made by such an Office, the person in whose name that application or registration stands is a national of that Contracting State, or is domiciled, or has a real and effective industrial or commercial establishment, in the said Contracting State,

x x x x x x x x x

Article 3bis
Territorial Effect

**The protection resulting from the international register shall extend to any Contracting Party only at the request of the person who files the international application or who is the holder of the international registration**. However, no such request can be made with respect to the Contracting Party whose Office is the Office of origin. (Emphases supplied)

As per the posting of the World Intellectual Property Organization (WIPO), there are three (3) basic stages to the registration process:[5]

**Stage 1 — Application through your National or Regional IP Office (Office of origin)**

Before you can file an international application, you need to have already registered, or have filed an application, in your "home" IP office.

The registration or application is known as the **basic mark**. You then need to submit your international application through this same IP Office, which will certify and forward it to WIPO.

**Stage 2 — Formal examination by WIPO**

WIPO only conducts a formal examination of your international application. Once approved, your mark is recorded in the International Register and published in the WIPO Gazette of International Marks.

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[5] <http://www.wipo.int/madrid/en/how_madrid_works.html> (last visited April 6, 2016.)

WIPO will then send you a certificate of your international registration and notify the IP Offices in all the territories where, you wish to have your mark protected.

It is important to note that the scope of protection of an international registration is not known at this stage in the process. It is only determined after substantive examination and decision by the IP Offices in the territories in which you seek protection, as outlined in Stage 3.

**Stage 3 — Substantive examination by National or Regional IP Offices (Office of the designated Contracting Party)**

The IP Offices of the territories where you want to protect your mark will make a decision within the applicable time limit (12 or 18 months) in accordance with their legislation, WIPO will record the decisions of the IP Offices in the International Register and then notify you.

If an IP Office refuses to protect your mark, either totally or partially, this decision will not affect the decisions of other IP Offices. You can contest a refusal decision directly before the IP Office concerned in accordance with its legislation. If an IP Office accepts to protect your mark, it will issue a statement of grant of protection.

The international registration of your mark is valid for 10 years. You can renew the registration at the end of each 10-year period directly with WIPO with effect in the designated Contracting Parties concerned.

As may be gleaned therefrom, the non-domiciliary's filing of an application in the IP Office of his home country is only the initial step to secure protection for his mark. Significantly, the application, after having been formally examined by the WIPO, has to be referred to the national or regional IP Office of the country in which the applicant seeks protection for the conduct of substantive examination. Ultimately, it is the latter office (in our case the Intellectual Property Office of the Philippines [IPOPHL]) which decides to accept or refuse registration. This is reflected in Article 5 of the Madrid Protocol which provides that "any Office of a Contracting Party which has been notified by the International Bureau of an extension to that Contracting Party x x x shall have the right to declare in a notification of refusal that protection cannot be granted in the said Contracting Party to the mark which is the subject of such extension":

Article 5
Refusal and Invalidation of Effects of International Registration in Respect of Certain Contracting Parties

(1) **Where the applicable legislation so authorizes, any Office of a Contracting Party which has been notified by the International Bureau of an extension to that Contracting Party**, under Article 3ter(1) or (2), of the protection resulting from the international registration **shall have the right to declare in a notification of refusal that protection cannot be granted in the said Contracting Party to the mark which is the subject of such extension. Any such refusal can be based only on the grounds which would apply, under the Paris Convention for the Protection of Industrial Property, in the case of a mark deposited direct with the Office which notifies the refusal**. However, protection may not be refused, even partially, by reason only that the applicable legislation would permit registration only in a limited number of classes or for a limited number of goods or services.

x x x x x x x x x

(Emphases supplied)

In this regard, it bears stressing that the grounds for refusal of protection enumerated in the Paris Convention, specifically under Article 6*quinquies* (B)[6] thereof, are substantially the same grounds for refusal for registration of marks as enumerated under

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[6] Article 6*quinquies* of the Paris Convention reads:

Article 6*quinquies*
Marks: *Protection of Marks Registered in One Country of the Union in the Other Countries of the Union*

x x x x x x x x x

B. Trademarks covered by this Article may be neither denied registration nor invalidated except in the following cases:

(i) when they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed;

(ii) when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, place of origin, of the goods, or the time of production, or have become customary in the current language or in the *bona fide* and established practices of the trade of the country where protection is claimed;

Section 123.1[7] of the IP Code. This further strengthens the classification of the Madrid Protocol as a mere executive agreement and not as a treaty, considering that it does not introduce any substantive alterations to our local law on trademarks, *i.e.*, the IP Code.

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(iii) when they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates to public order.

This provision is subject, however, to the application of Article 10*bis*.

x x x x x x x x x

[7] Section 123.1 of the IP Code reads:

Section 123. *Registrability*. — 123.1. A mark cannot be registered if it:

(a) Consists of immoral, deceptive or scandalous matter, or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(b) Consists of the flag or coat of arms or other insignia of the Philippines or any of its political subdivisions, or of any foreign nation, or any simulation thereof;

(c) Consists of a name, portrait or signature identifying a particular living individual except by his written consent, or the name, signature, or portrait of a deceased President of the Philippines, during the life of his widow, if any, except by written consent of the widow;

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or
(ii) Closely related goods or services, or
(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

(e) Is identical with, or confusingly similar to, or constitutes a translation of a mark which is considered by the competent authority of the Philippines to be well-known internationally and in the Philippines, whether or not it is registered here, as being already the mark of a person other than the applicant for registration, and used for identical or similar goods or services: *Provided*, That in determining whether a mark is well-known, account shall be taken of the knowledge of the relevant sector of the public, rather than of the public at large, including knowledge in the Philippines which has been obtained as a result of the promotion of the mark;

Thus, based on the foregoing, nothing precludes a Contracting Party, such as the Philippines, from imposing its own requirements for registration, such as that of the appointment of a resident agent or representative under Section 125 of the IP Code as above-discussed.

In fact, the IPOPHIL made it clear, in Office Order No. 139, Series of 2012[8] or the "Philippine Regulations Implementing the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks," that the substantive examination of a mark applied for protection under the Madrid System shall be undertaken in accordance with the IP Code and relevant trademark regulations:

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(f) Is identical with, or confusingly similar to, or constitutes a translation of a mark considered well-known in accordance with the preceding paragraph, which is registered in the Philippines with respect to goods or services which are not similar to those with respect to which registration is applied for: Provided, That use of the mark in relation to those goods or services would indicate a connection between those goods or services, and the owner of the registered mark: Provided further, That the interests of the owner of the registered mark are likely to be damaged by such use;

(g) Is likely to mislead the public, particularly as to the nature, quality, characteristics or geographical origin of the goods or services;

(h) Consists exclusively of signs that are generic for the goods or services that they seek to identify;

(i) Consists exclusively of signs or of indications that have become customary or usual to designate the goods or services in everyday language or in bona fide and established trade practice;

(j) Consists exclusively of signs or of indications that may serve in trade to designate the kind, quality, quantity, intended purpose, value, geographical origin, time or production of the goods or rendering of the services, or other characteristics of the goods or services;

(k) Consists of shapes that may be necessitated by technical factors or by the nature of the goods themselves or factors that affect their intrinsic value;

(l) Consists of color alone, unless defined by a given form; or

(m) Is contrary to public order or morality.

[8] Dated July 25, 2012.

Rule 9. *Allowance of a Mark; Publication for Opposition*. — Where the Philippines has been designated in an international registration, **the IPOPHL shall undertake the substantive examination of the mark in accordance with the IP Code and the TM Regulations**. Upon completion of the substantive examination and the mark is allowed, the mark shall be published for purposes of opposition in the IPOPHL's e-Gazette. Opposition proceedings shall be governed by the provisions of the IP Code, the TM Regulations, the BLA Regulations, and the Uniform Rules on Appeal.

Rule 10. *Ex-officio Provisional Refusal of Protection*. — Where the IPOPHL finds that, **in accordance with the IP Code and the TM Regulations, the mark that is the subject of an international registration designating the Philippines cannot be protected**, the IPOPHL shall, before the expiry of the refusal period under Article 5(2)(b) of the Madrid Protocol, notify the International Bureau of a provisional refusal of protection following the requirements of the Madrid Protocol and the Common Regulations. The holder of that international registration shall enjoy the same remedies as if the mark had been filed for registration directly with the IPOPHL. (Emphases supplied)

Therefore, even without delving into the issue of its legal standing, there is no merit in petitioner Intellectual Property Association of the Philippines' supposition that the Madrid Protocol conflicts with Section 125 of the IP Code.[9] As the *ponencia* aptly pointed out, "[t]he *Madrid Protocol* does not amend [or] modify the IP Code on the acquisition of trademark rights[,] considering that the applications under the *Madrid Protocol* are still examined according to the relevant national law," and "in [this] regard, the IPOPHL will only grant protection to a mark that meets the local registration requirements."[10]

In *Commissioner of Customs v. Eastern Sea Trading*,[11] the difference between treaties and executive agreements was explained as follows:

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[9] See *Ponencia*, pp. 3-5, 13.

[10] *Ponencia*, p. 13.

[11] 113 Phil. 333 (1961).

International agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties. But international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements.[12]

As herein explained, the Madrid Protocol only provides for a centralized system of international registration of marks, which, in no way, denies the authority of the Philippines, through the IPOPHL, to substantively examine and consequently, grant or reject an application in accordance with our own laws and regulations. Hence, it does not involve a change in our national policy, which necessitates the need for a treaty. Its attribution as an executive agreement was therefore correct, negating the existence of any grave abuse of discretion tantamount to lack or excess of jurisdiction.

**ACCORDINGLY,** I vote to **DISMISS** the petition for *certiorari*.

## SEPARATE CONCURRING OPINION

**LEONEN, *J.*:**

In September 2011, upon the Intellectual Property Association of the Philippines' recommendation, the Department of Foreign Affairs endorsed to the President the accession to the Madrid Protocol.[1] The Department of Foreign Affairs classified the Madrid Protocol as an executive agreement that does not need ratification by the Senate[2] under Executive Order No. 459,[3] which provides:

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[12] *Id.* at 338.

[1] *Rollo*, p. 108, OSG Comment.

[2] *Id.* at 19-21, Petition.

[3] Providing for the Guidelines in the Negotiation of International Agreements and its Ratification (1997).

**SEC. 9.** ***Determination of the Nature of the Agreement.*** — The Department of Foreign Affairs shall determine whether an agreement is an executive agreement or a treaty. (Emphasis in the original)

On March 27, 2012, Former President Benigno C. Aquino III ratified the Madrid Protocol through an instrument of accession later deposited with the Director General of the World Intellectual Property Organization.[4]

On July 25, 2012, the Madrid Protocol was entered into force.[5]

Petitioner Intellectual Property Association of the Philippines filed this Special Civil Action for Certiorari[6] to assail the validity of the President's accession to the Madrid Protocol. It implies that the President usurped the Senate's power to ratify treaties under our Constitution.[7] It argues that the Department of Foreign Affairs gravely abused its discretion in classifying the Madrid Protocol as an executive agreement instead of a treaty that requires senate concurrence.[8]

**I**

The ponencia proposes that we rule that although petitioner has no legal standing to file the petition, the issues involved in this case are of transcendental importance warranting this Court's exercise of its power of judicial review.

I concur with the able ponencia of my esteemed colleague Associate Justice Lucas P. Bersamin, finding that petitioner has no legal standing to bring this suit. Within our jurisdiction, petitioner's standing in a constitutional suit is still premised on a personal, direct, and material injury. Whether this right is shared with the public in general or only with a defined class does not matter. It is clear in this case that the affected

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[4] *Rollo*, p. 14.

[5] *Id.*

[6] *Id.* at 3-34.

[7] *Id.* at 17.

[8] *Id.* at 19-21.

practitioners in intellectual property actions are different from their incorporated association. As pointed out in the ponencia,[9] this holding is consistent with cases such as *Agan v. PIATCO*[10] and *De Castro v. Judicial and Bar Council*.[11] It is likewise consistent with *Integrated Bar of the Philippines v. Zamora*,[12] among others.

Neither should locus standi be immediately negated by an invocation of the concept of transcendental interest. The use of this exception to waive the requirement of locus standi is now more disciplined. In *Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission, et al.*,[13] this Court adopted the following determinants of whether an issue is of transcendental importance:

(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition, by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[14] (Citations omitted)

None of the above determinants are present in this case. This is not a case that involves funds, assets, or disregard of constitutional or statutory prohibition. None of the parties can claim direct interest in the issues raised.

For now, we provide a more studied balance between the need to comply with this Court's duty in Article VIII, Section 1[15] of

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[9] *Ponencia*, pp. 7-8.

[10] 450 Phil. 744 (2003) [Per *J*. Puno, *En Banc*].

[11] 629 Phil. 629 (2010) [Per *J*. Bersamin, *En Banc*].

[12] 392 Phil. 618 (2000) [Per *J*. Kapunan, *En Banc*].

[13] 638 Phil. 542 (2010) [Per *J*. Brion, *En Banc*].

[14] *Id.* at 557.

[15] CONST., Art. VIII, Sec. 1 provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

the Constitution and its inherent nature as not being an advisory organ. We should continue our policy of judicial deference, albeit with vigilance against grave abuse of discretion, which have untold repercussions on fundamental constitutional rights.

Parenthetically, the Solicitor General presents the argument that certiorari under Rule 65, Section 1 of the Rules of Court is not the proper remedy for this action.[16] He correctly clarifies that the Secretary of the Department of Foreign Affairs was not exercising a judicial or quasi-judicial function when it determined that the Madrid Protocol was an executive agreement based on the powers granted by the President in Executive Order No. 459.[17] Nor does a Rule 65 certiorari lie against the President's accession to the Madrid Protocol on March 27, 2012.[18] This, too, is not a judicial or quasi-judicial function.

However, the procedural vehicle notwithstanding, the Rules of Court cannot limit the powers granted to this Court by the Constitution itself. Recalling Article VIII, Section 1 of the 1987 Constitution, judicial power includes "the duty . . . to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government."[19]

This constitutional mandate is sparse in its qualification of the nature of the action of "any branch or instrumentality of the government." Whether this Court may limit it only to judicial or quasi-judicial actions will be constitutionally suspect. The requirement is that there should be, in a justiciable case, a clear

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Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[16] *Rollo*, pp. 114-115.

[17] *Id.* at 114.

[18] *Id.* at 115.

[19] CONST., Art. VIII, Sec. 1.

showing that there is "grave abuse of discretion amounting to lack or excess of jurisdiction."[20]

This constitutional mandate does not do away with the policy of judicial deference. Neither can it be read as changing the passive judicial temperament of this Court to active interference in the acts of the other constitutional departments and organs of government.[21] There must still be a justiciable case with a ripe and actual controversy.[22] The requirement to find "grave abuse of discretion" is a high bar. It requires capriciousness, arbitrariness, and actions without legal or constitutional basis.[23]

In my view, the Constitution itself has amended the Rules of Court impliedly, and we have recognized its effects in various cases. As in all implied amendments, this has been the occasion for not a few misinterpretations.

Thus, it is time for this Court to expressly articulate, through amendments of Rule 65, the constitutional mandate that we have so far been implementing.

**II**

The ponencia proposes to declare the President's accession to the Madrid Protocol a valid executive agreement that does not need to be ratified by the Senate.

Respectfully, I disagree.

I am not prepared to grant that the President can delegate to the Secretary of the Department of Foreign Affairs the prerogative to determine whether an international agreement is a treaty or

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[20] CONST., Art. VIII, Sec. 1.

[21] See *Angara v. Electoral Commission*, 63 Phil. 139, 157-159 (1936) [Per *J.* Laurel, *En Banc*].

[22] CONST., Art. VIII, Sec. 1.

[23] *J.* Leonen Concurring Opinion in *Poe-Llamanzares v. Commission on Elections,* G.R. No. 221697, March 8, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/march2016/221697_leonen.pdf> 25 [Per *J.* Perez, *En Banc*].

an executive agreement. Nor should this case be the venue to declare that all executive agreements need not undergo senate concurrence. Tracing the history of Article VII, Section 21 of the Constitution reveals, through the "[c]hanges or retention of language and syntax[,]"[24] its congealed meaning. The pertinent constitutional provision has evolved into its current broad formulation to ensure that the power to enter into a binding international agreement is not concentrated on a single government department.

The 1935 Constitution recognized the President's power to enter into treaties. The exercise of this power was already limited by the requirement of legislative concurrence only with treaties, thus:

ARTICLE VII
EXECUTIVE DEPARTMENT

. . . . . . . . .

SECTION 11. . . .

. . . . . . . . .

(7) The president shall have the power, with the concurrence of a majority of all the Members of the National Assembly ***to make treaties***, and with the consent of the Commission on Appointments, he shall appoint ambassadors, other public ministers, and consuls. He shall receive ambassadors and other ministers duly accredited to the Government of the Philippines. (Emphasis supplied)

The 1973 Constitution also requires legislative concurrence for the validity and effectiveness of a treaty, thus:

ARTICLE VIII
THE NATIONAL ASSEMBLY

. . . . . . . . .

SECTION 14. (1) Except as otherwise provided in this Constitution, ***no treaty*** shall be valid and effective unless concurred in by a majority of all the Members of the National Assembly. (Emphasis supplied)

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[24] *Id.* at 54.

The concurrence of the Batasang Pambansa was duly limited to treaties.

However, the first clause of this provision, "[e]xcept as otherwise provided[,]" leaves room for the exception to the requirement of legislative concurrence. Under Article XIV, Section 15 of the 1973 Constitution, requirements of national welfare and interest allow the President to enter into not only treaties but also international agreements without legislative concurrence, thus:

ARTICLE XIV

THE NATIONAL ECONOMY AND THE PATRIMONY OF THE NATION

. . . . . . . . .

SECTION 15. Any provision of paragraph one, Section fourteen, Article Eight and of this Article notwithstanding, the Prime Minister may enter into international treaties or agreements as the national welfare and interest may require.

This Court, in the recent case of *Saguisag v. Executive Secretary*,[25] characterized this exception as having "left a large margin of discretion that the President could use to bypass the Legislature altogether."[26] This Court noted this as "a departure from the 1935 Constitution, which explicitly gave the President the power to enter into treaties only with the concurrence of the [National Assembly]."[27]

As in the 1935 Constitution, this exception is no longer present in the current formulation of the provision. The power and responsibility to enter into treaties is now shared by the executive and legislative departments. Furthermore, the role of the

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[25] G.R. No. 212426, January 12, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/212426.pdf> [Per *C.J.* Sereno, *En Banc*].

[26] *Id.* at 7.

[27] *Id.*

legislative department is expanded to cover not only treaties but international agreements in general as well, thus:

ARTICLE VII
Executive Department

. . . . . . . . .

SECTION 21. No treaty ***or international agreement*** shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate. (Emphasis supplied)

In discussing the power of the Senate to concur with treaties entered into by the President, this Court in *Bayan v. Zamora*[28] remarked on the significance of this legislative power:

For the role of the Senate in relation to treaties is essentially legislative in character; the Senate, as an independent body possessed of its own erudite mind, has the prerogative to either accept or reject the proposed agreement, and whatever action it takes in the exercise of its wide latitude of discretion, pertains to the wisdom rather than the legality of the act. *In this sense, the Senate partakes a principal, yet delicate, role in keeping the principles of* ***separation of powers*** *and of* ***checks and balances*** *alive and vigilantly ensures that these cherished rudiments remain true to their form in a democratic government such as ours. The Constitution thus animates, through this treaty-concurring power of the Senate, a healthy system of checks and balances indispensable toward our nation's pursuit of political maturity and growth.* True enough, rudimentary is the principle that matters pertaining to the wisdom of a legislative act are beyond the ambit and province of the courts to inquire.[29] (Emphasis supplied, citations omitted)

Therefore, having an option does not necessarily mean absolute discretion on the choice of international agreement. There are certain national interest issues and policies covered by all sorts of international agreements, which may not be dealt with by the President alone. An interpretation that the executive has unlimited discretion to determine if an agreement requires senate concurrence not only runs counter to the principle of checks

[28] 396 Phil. 623 (2000) [Per *J.* Buena, *En Banc*].

[29] *Id.* at 665.

and balances; it may also render the constitutional requirement of senate concurrence meaningless:

> If executive-agreement authority is un-contained, and if what may be the proper subject-matter of a treaty may also be included within the scope of executive-agreement power, the constitutional requirement of Senate concurrence could be rendered meaningless. The requirement could be circumvented by an expedient resort to executive agreement.
>
> The definite provision for Senate concurrence in the Constitution indomitably signifies that there must be a regime of national interests, policies and problems which the Executive branch of the government cannot deal with in terms of foreign relations except through treaties concurred in by the Senate under Article VII, Section 21 of the Constitution. The problem is how to define that regime, i.e., that which is outside the scope of executive-agreement power of the President and which exclusively belongs to treaty-making as subject to Senate concurrence.[30]

Article VII, Section 21 does not limit the requirement of senate concurrence to treaties alone. It may cover other international agreements, including those classified as executive agreements, if: (1) they are more permanent in nature; (2) their purposes go beyond the executive function of carrying out national policies and traditions; and (3) they amend existing treaties or statutes.

As long as the subject matter of the agreement covers political issues and national policies of a more permanent character, the international agreement must be concurred in by the Senate.

However, it may be unnecessary in this case to determine whether the Madrid Protocol amends Section 125 of the Intellectual Property Code.[31] The Solicitor General makes a persuasive argument that the accession to this international agreement does not per se remove the possibility of appointing a resident agent. Petitioner likewise acknowledges that domestic

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[30] MERLIN M. MAGALLONA, *A PRIMER IN INTERNATIONAL LAW* 66-67 (1997).

[31] Rep. Act No. 8293 (1998).

requirements regarding local representation may be reserved by the executive upon accession to the Madrid Protocol, thus:

> 7.43 Under the "*Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol*", the matter in relation to the appointment of a local representative before the Office of origin or the Office of a designated Contracting Party is outside the scope of the *Madrid Protocol* and is instead governed by the law and practice of the Contracting Party concerned. As such, there was no hindrance whatsoever for the Executive to have made a reservation when it acceded to the *Madrid Protocol*, to require foregoing applicants to obtain local representation in the Philippines upon the filing of trademark applications with the latter as the designated contracting party. Otherwise, the Executive should not have acceded to the *Madrid Protocol* without the concurrence of the Philippine Congress or should have done so only pursuant to an act of Congress.[32]

However, the proper calibration of these rights and privileges should await the proper case filed by a party with direct, personal, and material interest before the full range of legal arguments occasioned by the concrete realities of the parties can be fully appreciated.

I have no doubt that many of the lawyers who practice in the field of trademark protection in Intellectual Property Law do not have the myopic goal of simply being administrative agents or local post offices for owners of foreign marks. I have full confidence that they can meet the skill and accreditation requirements to work under the Madrid Protocol as well as any foreign lawyer. In an era of more transnational transactions and markets evolving from national boundaries, we should adapt as a profession, as surely as our products become more competitive. The sooner our profession adapts, the better it can assist our entrepreneurs and our own industries to weather the difficult political economies of the world market.

**ACCORDINGLY,** I vote to **DISMISS** the Petition for Certiorari.

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[32] *Rollo*, p. 343, Petitioner's Memorandum.

**EN BANC**

[G.R. No. 212615. July 19, 2016]

**LEODEGARIO A. LABAO, JR.,** *petitioner, vs.* **COMMISSION ON ELECTIONS and LUDOVICO L. MARTELINO, JR.,** *respondents.*

[G.R. No. 212989. July 19, 2016]

**SHARON GRACE MARTINEZ-MARTELINO,** *petitioner, vs.* **COMMISSION ON ELECTIONS and VICE MAYOR JOSE O. ALBA, JR.,** *respondents.*

**SYLLABUS**

1. **POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; PRE-PROCLAMATION CONTROVERSY; DEFINITION AND ISSUES WHICH ARE PROPER SUBJECT MATTERS THEREOF.—** The Omnibus Election Code (OEC) clearly defines the term "pre-proclamation controversy." Pertinently, Section 241 thereof provides as follows: Sec. 241. *Definition.* – A pre-proclamation controversy refers to **any question pertaining to or affecting the proceedings of the board of canvassers** which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, **or any matter raised under Sections 233 (*When the election returns are delayed, lost or destroyed*), 234 (*Material defects in the election returns*), 235 (*When election returns appear to be tampered with or falsified*), and 236 (*Discrepancies in election returns*) in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.** x x x Section 243 of the OEC further enumerates the issues which are proper subject matters of a pre-proclamation controversy as follows: Sec. 243. ***Issues that may be raised in pre-proclamation controversy.* –** The following shall be proper issues that may be raised in a pre-proclamation controversy: a. **Illegal composition or proceeding** of the board of canvassers; b. The **canvassed election returns are incomplete, contain material defects, appear to be tampered**

**with or falsified, or contain discrepancies** in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this code; c. The **election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic**; and d. **When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.** In *Suhuri v. Commission on Elections,* this Court held that the above "enumeration is restrictive and exclusive."

2. **ID.; LOCAL GOVERNMENT CODE; DISQUALIFICATION FROM RUNNING FOR ANY ELECTIVE LOCAL POST; SECTION 40(e) DISQUALIFYING FUGITIVES FROM JUSTICE IN CRIMINAL OR NON-POLITICAL CASES HERE AND ABROAD; INCLUDES THOSE WHO FLEE AFTER CONVICTION AND ALSO THOSE WHO FLEE AFTER BEING CHARGED; INTENT TO EVADE AS THE COMPELLING FACTOR IS NOT PRESENT IN CASE AT BAR.—** [T]he petition for disqualification against Labao, Jr. was based on Section 40(e) of the Local Government Code, disqualifying "[f]ugitives from justice in criminal or non-political cases here or abroad" from running for any elective local position. x x x [W]hat matters in the resolution of the present cases is whether or not during the period starting from the time the Information for murder filed on April 10, 2013 until the day of the election, on May 13, 2013, Labao, Jr. can be considered a fugitive from justice, and, hence, disqualified to run for the position of Mayor of Mambusao, Capiz. Based on settled jurisprudence, the term "'*fugitive from justice*' includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, **flee to avoid prosecution.**" In *Rodriguez v. Commission on Elections*, this Court held that: The definition thus indicates that the *intent to evade* is the compelling factor that animates one's flight from a particular jurisdiction. x x x Such intent in these cases has not been established by the evidence on record. x x x Moreover, there was no proof to show the efforts exerted by the police to locate Labao, Jr. and that despite such efforts, the warrant of arrest against him could not be served. Although Labao, Jr. had executed a Special Power of Attorney (SPA) in favor of his wife authorizing her "to appear in all stages of the

> proceedings, if required, and if necessary, to testify and/or submit appropriate documentary evidence," again, it was not shown that the SPA was executed solely for the purpose of evading arrest. x x x Given the foregoing, this Court finds that the pieces of evidence on record do not sufficiently establish Labao, Jr.'s intention to evade being prosecuted for a criminal charge that will warrant a sweeping conclusion that Labao, Jr., at the time, was evading prosecution so as to disqualify him as a fugitive from justice from running for public office.

**APPEARANCES OF COUNSEL**

*Myra Cristela A. Yngcong* and *Leodegario B. Dadivas* for petitioner in G.R. No. 212615.

*Genalin A. Jimenez* for petitioner in G.R. No. 212989.

*Fagutao Law Firm* for private respondent in G.R. No. 212615.

*The Solicitor General* for public respondents.

## D E C I S I O N

**LEONARDO-DE CASTRO, *J.*:**

Before the Court are two consolidated Petitions:

**G.R. No. 212615** is a Petition for *Certiorari* and Prohibition filed by Leodegario A. Labao, Jr. (Labao, Jr.) to annul and set aside the May 21, 2014[1] and September 24, 2013[2] Resolutions of the Commission on Elections (COMELEC) in SPA Case No. 13-294 (DC), entitled "*Ludovico L. Martelino, Jr. v. Leodegario A. Labao, Jr.*," disqualifying him as candidate for the position of Mayor of the Municipality of Mambusao, Capiz as well as nullifying his proclamation as the duly elected Mayor thereof.

And, **G.R. No. 212989** is a Petition for *Certiorari* and *Mandamus* filed by Sharon Grace Martinez-Martelino (Sharon) (*i*) to annul and set aside the aforementioned resolutions of the

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[1] *Rollo* (G.R. No. 212615), pp. 35-43.

[2] *Id.* at 27-30.

COMELEC but only as to the portion directing the application of the rules of succession (in case of a permanent vacancy in the Office of the Mayor) pursuant to Section 44 of the Local Government Code; and (*ii*) to compel the COMELEC to proclaim her, instead, as the duly elected Mayor of the Municipality of Mambusao, Capiz.

Both petitions were filed pursuant to Rule 64 in relation to Rule 65, of the Rules of Court, as amended.

The facts shared by both cases are as follows:

In a Petition for Disqualification dated May 8, 2013 filed before the COMELEC, Ludovico L. Martelino, Jr. (Ludovico) sought the disqualification of Labao, Jr. as candidate[3] for Mayor of the Municipality of Mambusao, Capiz in the May 13, 2013 elections, on the ground that Labao, Jr. was a fugitive from justice. Ludovico essentially averred that there was an outstanding warrant for Labao, Jr.'s arrest in connection with the filing of an Information for Murder against him and four other persons; and that he had eluded arrest, thus, was at large.

The Information for murder stemmed from the assassination of Vice-Mayor Abel P. Martinez (Vice-Mayor Martinez) in front of his residence on May 4, 2012. The assailants of Vice-Mayor Martinez were not immediately known. But on December 20, 2012, one Roger D. Loredo (Loredo) executed an extrajudicial confession admitting his participation in the killing of Vice Mayor Martinez, and implicating Labao, Jr. as the mastermind thereof. On April 4, 2013, the Department of Justice (DOJ) found probable cause to indict Labao, Jr. and four other persons for murder.

On April 10, 2013, an Information[4] for murder was filed before the Regional Trial Court (RTC), Branch 21, Mambusao, Capiz. On the same day, warrants for the arrest of Labao, Jr. and four other personalities were issued.

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[3] Labao filed his Certificate of Candidacy as Mayor of Mambusao, Capiz on October 3, 2012. (*Rollo* [G.R. No. 212615], p. 44.)

[4] *Rollo* (G.R. No. 212615), p. 45.

On April 14, 2013, acting on a tip, members of the Philippine National Police (PNP) attempted but failed to apprehend Labao, Jr. at St. Paul's Hospital in Iloilo City where he was supposedly confined.[5]

In view of the above-described state of affairs, Ludovico filed the said petition for disqualification against Labao, Jr. alleging that the latter's "*flight from justice [was] apparent when he surreptitiously eluded arrest, that is, without proper discharge clearance from St. Paul's Hospital, at the time the PNP personnel tried to serve the warrant of arrest on him*." He argued that Labao, Jr. qualified as a fugitive from justice as he went into hiding after he was charged in court to avoid criminal prosecution.[6] It is for such reason that Labao, Jr. is considered a fugitive from justice and, thus, disqualified from running as mayor pursuant to Section 40 of the Local Government Code, *viz.*:

**Section 40. Disqualifications.** — The following persons are disqualified from running for any elective local position:

x x x x x x x x x

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad[.]

In his Answer dated June 12, 2013, Labao, Jr. denied the assertion that he was a fugitive from justice. He countered that there was no charge against him when he filed his Certificate of Candidacy (COC); and that he was only implicated in the crime when Loredo filed his extrajudicial confession on December 20, 2012. Further, he asserted that:

14. On 10 April 2013 to 14 April 2013, respondent [Labao, Jr.] was confined at St. Paul's Hospital, Iloilo City due to constant chest pains occasioned by an enlarged heart that his Cardiologist recommended "Complete Management for Acute Coronary Syndrome, Plan to do Angiogram," per Clinical/Medical Abstract dated 13 April 2013 x x x.

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[5] *Id.* at 28 and 49.

[6] *Id.* at 50.

15. Having been confined at said hospital, particularly at its Surgical Intensive Care Unit, respondent had no idea as to the truth or falsity of the allegations that the Murder charge against him were maliciously broadcasted/published over radio, tv and the newspapers.

16. On or about 12 April 2013, respondent intended to submit himself to the jurisdiction of the court by filing a motion for hospital arrest with [Presiding Judge] Amular but he was informed that PJ Amular was in Boracay, Aklan and will report for work only on 15 April 2013, hence, the filing of that motion was rescheduled on 15 April 2013.

17. On 14 April 2013, respondent learned from his staff that police authorities had surrounded the hospital and they personally heard a police officer say "Shoot to kill si Labao." Instinctively, without any intent to elude arrest, but for the singular purpose of preserving his life, he was forced to leave the hospital.

18. On 15 April 2013, PJ Amular decided to inhibit himself from the Murder case after issuing the Warrant of Arrest against respondent with precipitate haste, per the Order of Inhibition dated 15 April 2013 x x x.

19. Immediately thereafter, the Murder case was referred to the Supreme Court for assignment to another court/judge as there is no pairing judge to try or hear the subject case in the Regional Trial Court of Mambusao, Capiz.

20. Since then, respondent had been preparing himself to undergo andiogram to improve his heart ailment as well as **awaiting the assignment by the Supreme Court of the Murder case to another court/judge so he can submit himself to the jurisdiction of the court** by applying for hospital arrest and/or filing any other appropriate pleading.

21. Until the Supreme Court has assigned the Murder case to another court/judge, the same cannot be prosecuted, without any fault on the part of respondent, as it was PJ Amular himself who was responsible in creating that consequential situation wherein the prosecution of the case was held in abeyance due to his inhibition.[7]

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[7] *Id.* at 63-65.

Finally, Labao, Jr. puts emphasis on the fact that he had already been proclaimed as the duly elected Municipal Mayor of Mambusao, Capiz on May 14, 2013.[8]

### *Ruling of the COMELEC First Division*

In a Resolution dated September 24, 2013, the COMELEC First Division resolved to disqualify Labao, Jr., the dispositive part of which reads:

> **WHEREFORE**, premises considered, the Commission **RESOLVED** as it hereby **RESOLVES** to: **DISQUALIFY** respondent Leodegario A. Labao Jr. as candidate for the position of Mayor of Mambusao, Capiz.[9]

Citing *Rodriguez v. Commission on Elections*,[10] to wit:

> [A] fugitive from justice x x x includes not only those who flee a*fter conviction to avoid* punishment but likewise who, after being charged, flee to avoid prosecution.
>
> The definition thus indicates that the intent to evade is the compelling factor that animates one's flight from a particular jurisdiction. And obviously, there can only be an *intent to evade* prosecution or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.

Prescinding from the above definition, the COMELEC First Division held that Labao, Jr. was a fugitive from justice, *i.e.*, that his acts subsequent to the filing of the Information for murder and the issuance of a warrant of arrest indicate an unmistakable intent to evade prosecution. Particularly, it held that:

> There is no question that an Information for Murder was already filed and pending in court against respondent. Likewise, there is no question that a warrant of arrest was issued against him as early as April 10, 2013. In fact, the arrest warrant was implemented during

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[8] *Id.* at 56.

[9] *Id.* at 30.

[10] 328 Phil. 624, 642 (1996).

respondent's confinement at the hospital, only he was able to elude arrest. In other words, respondent knew that he is an accused for a capital offense and a warrant was already issued against him. Under such circumstance, therefore, he should have voluntarily surrendered to the authorities. The fact that respondent has not yet assumed office despite having been proclaimed as the duly elected Mayor of Mambusao, Capiz, militates against his insistence that he is in good faith.

Moreover, his insistence that he could not be considered as avoiding prosecution because the case has not yet been assigned to another court/judge is of no moment. The surrender of a person against whom a warrant of arrest has been issued does not depend upon the presence or the absence of a judge.

It also does not escape us that respondent even executed a Special Power of Attorney in favor of his wife authorizing her "to appear in all stages of the proceedings, if required, and if necessary, to testify and/or submit appropriate documentary evidence." While this is undoubtedly within respondent's prerogative, it is a clear indication that he does not wish to face the music by complying with the warrant of arrest which up to now is still outstanding.[11] (Emphasis supplied.)

Labao, Jr. moved for the reconsideration[12] of the above-quoted ruling based on the following grounds: (*i*) the petition for disqualification has ceased to be a pre-proclamation controversy as he had already been proclaimed as Mayor; (*ii*) the *Rodriguez* ruling on "fugitive from justice" did not apply to him; and (*iii*) since he had already been proclaimed as winner, all doubts regarding his qualification should be resolved in his favor in order to breathe life to the will of the people.

On October 14, 2013, Sharon, the daughter of Vice-Mayor Martelino and wife of Ludovico, filed a *Motion to Intervene* in the COMELEC case as well as a *Motion for Reconsideration* of the September 24, 2013 Resolution of the COMELEC First Division. In her motions,[13] she averred that she also ran for the

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[11] *Rollo* (G.R. No. 212615), p. 29.

[12] *Id.* at 75-87.

[13] *Id.* at 37.

same Mayoralty position as Labao, Jr. in the May 13, 2013 elections; that since Labao, Jr.'s disqualification made his candidacy illegitimate, the votes cast in his favor should be considered stray under Section 211, paragraph 24[14] of the Omnibus Election Code; and that she obtained the second highest number of votes; hence, she should be proclaimed the winning Mayoralty candidate.

On November 4, 2013, the Liga ng mga Barangay-Mambusao Chapter (LBMC) also moved to intervene, arguing that the case, which was considered a pre-proclamation controversy, should be dismissed for having been rendered moot and academic by Labao, Jr.'s victory.[15]

In the meantime, RTC-Branch 21[16] issued an Order[17] on November 4, 2013 temporarily suspending the proceedings in consideration of a July 15, 2013 DOJ *Resolution*[18] issued by Undersecretary Francisco F. Baraan III (*Baraan Resolution*) excluding Labao, Jr. from the Information for murder of Vice-Mayor Martinez. The *fallo* of the said RTC Order reads:

> In view of the foregoing, the implementation of the warrant of arrest against accused Labao is lifted and temporarily suspended. Consequently, the proceedings against accused Labao is temporarily suspended until and after the final determination of [the] Motion for Reconsideration filed by the prosecution with the Department of Justice

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[14] **Sec. 211. Rules for the appreciation of ballots.** — In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of election inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voter's will:

x x x x x x x x x

24. Any vote cast in favor of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.

[15] *Rollo* (G.R. No. 212615), p. 37.

[16] To which a judge had already been assigned.

[17] *Rollo* (G.R. No. 212615), pp. 110-113.

[18] *Id.* at 94-109.

through the Police Provincial Office. All law enforcers[,] their deputies and agents or anyone acting for and on their behalf or authority are directed to immediately cease and desist from enforcing the Warrant of Arrest dated April 10, 2013 against Leodegario A. Labao, Jr. until further orders from this Court.[19]

Thus, in view of the said RTC Order, on November 6, 2013, Labao, Jr. filed a *Supplemental Motion for Reconsideration*[20] before the COMELEC on the ground that "*he is already a free man, and most certainly 'not a fugitive from justice*,'" by virtue of the lifting and suspension of the implementation of the warrant of arrest by the RTC.

On November 14, 2013, however, DOJ Secretary Leila De Lima reversed the July 15, 2013 *Baraan Resolution*, effectively reinstating Labao, Jr. as an accused in the criminal case filed before RTC-Branch 21.[21]

In yet another twist of events, on May 21, 2014, resolving the issue of whether or not probable cause exists for the issuance of a warrant of arrest against Labao, Jr., RTC-Branch 21 issued another Order[22] this time dismissing altogether the criminal complaint against Labao, Jr. on the ground of lack of probable cause.

### *Ruling of the COMELEC En Banc*

In a Resolution dated May 21, 2014, the same day as the issuance of the above-mentioned RTC Order, the COMELEC *En Banc* denied Labao, Jr.'s motion, *viz.*:

**WHEREFORE**, the Motion for Reconsideration of **RESPONDENT LEODEGARIO A. LABAO, JR.** of the Resolution dated 24 September 2013 of the First Division is hereby **DENIED** for lack of merit and his disqualification as candidate for the position of Mayor of Mambusao, Capiz is hereby **AFFIRMED**.

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[19] *Id.* at 113.

[20] *Id.* at 114-116.

[21] *Id.* at 38.

[22] *Id.* at 141-153; penned by Judge Domingo L. Casiple, Jr.

Consequently, Respondent's **PROCLAMATION** is hereby declared **NULL AND VOID**.

Accordingly, let the rules of succession provided under Section 44 of the Local Government Code apply.[23]

In affirming Labao, Jr.'s disqualification, the COMELEC *En Banc* confirmed its First Division's finding as to Labao Jr.'s intention to evade prosecution; thus, said candidate was a "fugitive from justice" as defined in *Rodriguez*. It explained that the phrase "fugitive from justice" contemplates two situations: 1) those who, after conviction flee to avoid punishment; and 2) those who, **after being charged, flee to avoid prosecution**; and Labao, Jr. falls under the second category.[24]

In filling up the vacancy brought about by the disqualification of Labao, Jr., the COMELEC *En Banc* applied *Fermin v. Commission on Elections*[25] wherein this Court ruled that a disqualified candidate is merely prohibited to continue as a candidate, as opposed to a candidate whose certificate of candidacy is cancelled. A disqualified candidate may be substituted, and his certificate of candidacy subsists. In which case, the rule on succession under Section 44 of the Local Government Code (LGC) applies:

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor*. — If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor x x x.

With respect to the motions for intervention separately filed by Sharon and LBMC, the COMELEC *En Banc* denied both motions in view of the fact that they were filed after the conferences set for the case — in violation of Section 3, Rule 8 of the COMELEC Rules of Procedure, which provides that an

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[23] *Id.* at 42.

[24] *Id.* at 33-34.

[25] 595 Phil. 449, 469 (2008).

intervention may be denied when it will unduly delay the rights of the original parties. Further, it held that passing upon the issue/s raised in the said motions would be inutile considering its disposition of Labao, Jr.'s motion for reconsideration that settles all the remaining issues, *i.e.*, who shall replace Labao, Jr.[26]

Hence, the two petitions separately filed by Labao, Jr. and Sharon before this Court.

***The Issues***

In his petition docketed as **G.R. No. 212615**, Labao, Jr. prays for the annulment and setting aside of the COMELEC Resolutions on the following grounds:

RESPONDENT COMELEC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT:

1.) ENTERTAINED A PRE-PROCLAMATION CONTROVERSY EVEN AFTER PETITIONER WAS PROCLAIMED AS THE DULY ELECTED MUNICIPAL MAYOR OF MAMBUSAO, CAPIZ; AND,

2.) DISQUALIFIED PETITIONER AS MUNICIPAL MAYOR OF MAMBUSAO, CAPIZ ON THE PREMISE THAT HE IS A FUGITIVE FROM JUSTICE NOTWITHSTANDING THAT THERE IS NO MORE WARRANT OF ARREST AGAINST HIM AND THE CRIMINAL CHARGE FOR MURDER AGAINST HIM HAD ALREADY BEEN DISMISSED FOR LACK OF PROBABLE CAUSE.[27]

Labao, Jr. insists that the COMELEC should have dismissed the case against him on account of his proclamation as Mayor of Mambusao, Capiz; thus, he argues that the disqualification case has ceased to be a pre-proclamation controversy.

On the other hand, in her petition docketed as **G.R. No. 212989**, Sharon seeks the annulment and setting aside of the COMELEC *En Banc* Resolution but only that portion

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[26] *Rollo* (G.R. No. 212989), pp. 34-35.

[27] *Rollo* (G.R. No. 212615), p. 14.

that directs the application of the rules on succession in case of permanent vacancy in the Office of the Mayor provided under Section 44 of the Local Government Code. It is Sharon's submission that, pursuant to *Maquiling v. Commission on Elections*,[28] having garnered the second highest number of votes next to Labao, Jr., she should be proclaimed as the duly elected Mayor of Mambusao since the COMELEC already disqualified Labao, Jr. In fine, she anchors her petition on the following arguments:

I. Whether petitioner should be allowed to intervene in SPA No. 13-294 (DC);

II. Whether the qualification and/or disqualification requirements of a candidate, as mandated by the [C]onstitution and law, must be possessed during the filing of the certificate of candidacy and on the day of the election; and

III. Whether petitioner should be declared the winning candidate and proclaimed as Mayor of Mambusao.[29]

***This Court's Ruling***

**Re: G.R. No. 212615**

Labao, Jr.'s petition is meritorious.

***The petition against Labao, Jr. was for disqualification and not a pre-proclamation controversy.***

The petition filed by Ludovico against Labao, Jr. before the COMELEC, docketed as SPA Case No. 13-294 (DC), is not a pre-proclamation controversy. The Omnibus Election Code (OEC) clearly defines the term "pre-proclamation controversy." Pertinently, Section 241 thereof provides as follows:

Sec. 241. *Definition*. — A pre-proclamation controversy refers to **any question pertaining to or affecting the proceedings of the**

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[28] 709 Phil. 408 (2013).

[29] *Rollo* (G.R. No. 212989), p. 11.

**board of canvassers** which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, **or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.** (Emphasis supplied.)

Sections 233 to 236 of the OEC read:

Sec. 233. ***When the election returns are delayed, lost or destroyed.*** — In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.

The board of canvassers, notwithstanding the fact that not all the election returns have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election.

Sec. 234. ***Material defects in the election returns***. — If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction:

*Provided*, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: *Provided, further*, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice

thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates.

Sec. 235. ***When election returns appear to be tampered with or falsified***. — If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof. If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass.

Sec. 236. ***Discrepancies in election returns***. — In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same returns, and in either case the difference affects the results of the election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidates concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned.

From the foregoing provisions of the OEC, it is quite clear that the petition for disqualification filed by Ludovico docketed as SPA Case No. 13-294 (DC) in no way qualifies as a pre-proclamation controversy, having absolutely nothing to do with any matter or ground pertaining to or affecting the proceedings of the board of canvassers or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

Section 243 of the OEC further enumerates the issues which are proper subject matters of a pre-proclamation controversy as follows:

> Sec. 243. ***Issues that may be raised in pre-proclamation controversy.*** — The following shall be proper issues that may be raised in a pre-proclamation controversy:
>
> a. **Illegal composition or proceeding** of the board of canvassers;
>
> b. The **canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies** in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
>
> c. The **election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic**; and
>
> d. **When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.** (Emphasis supplied.)

In *Suhuri v. Commission on Elections*,[30] this Court held that the above "enumeration is restrictive and exclusive."

Thus, in this case, the petition filed against Labao, Jr. does not come within the scope of a pre-proclamation controversy under the aforequoted OEC provision.

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[30] 617 Phil. 852, 861 (2009).

The grounds to file a petition for disqualification are provided for in Section 12 or 68 of the OEC, or under Section 40 of the Local Government Code.[31] In the case at bar, the petition for disqualification against Labao, Jr. was based on Section 40 (e) of the Local Government Code, quoted above, disqualifying "[f]ugitives from justice in criminal or non-political cases here or abroad" from running for any elective local position.

***Labao, Jr. was not a fugitive from justice at the time that he was a candidate for Mayor of Mambusao, Capiz during the May 13, 2013 Elections.***

Labao, Jr. relies much on the fact that, on May 21, 2014, one year after the conduct of the elections, the RTC had already dismissed the murder charge against him. But what matters in the resolution of the present cases is whether or not during the period starting from the time the Information for murder filed on April 10, 2013 until the day of the election, on May 13, 2013, Labao, Jr. can be considered a fugitive from justice, and, hence, disqualified to run for the position of Mayor of Mambusao, Capiz.

Based on settled jurisprudence, the term "'*fugitive from justice*' includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, **flee to <u>avoid prosecution</u>**."[32] In *Rodriguez v. Commission on Elections*,[33] this Court held that:

> The definition thus indicates that the *intent to evade* is the compelling factor that animates one's flight from a particular jurisdiction. And obviously, **there can only be an <u>intent to evade prosecution</u> or punishment when there is knowledge by the fleeing subject of an already instituted indictment, or of a promulgated judgment of conviction.** (Emphasis supplied.)

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[31] *Fermin v. Commission on Elections and Dilangalen, supra* note 25 at 469.

[32] *Marquez, Jr. v. Commission on Elections*, 313 Phil. 417, 423 (1995); *Rodriguez v. Commission on Elections, supra* note 10.

[33] *Rodriguez v. Commission on Elections, supra* note 10.

Such intent in these cases has not been established by the evidence on record.

The COMELEC anchored its finding that Labao, Jr. was a fugitive from justice from the fact that he was missed at the hospital when the warrant for his arrest was being served. No other substantial evidence was presented to prove that Labao, Jr. tried to hide from the authorities or that he left Mambusao, Capiz to avoid being arrested and prosecuted. On the part of Labao, Jr., he was able to show his presence in Mambusao, and his desire to participate in the proceedings before the DOJ and the RTC, by citing the following circumstances:

> 1. He took his Oath of Office as Municipal Mayor of Mambusao, Capiz, per the *Panunumpa sa Katungkulan* dated 25 June 2013.[34]
>
> 2. He assumed office as Municipal Mayor of Mambusao, Capiz per the DILG Certification[35] dated 30 June 2013.
>
> 3. He served as Municipal Mayor and received his salary for the period from 1-3 July 2013, per certification by the Administrative Officer of the Request and Disbursement Voucher dated 3 October 2013.[36]
>
> 4. He filed a Petition for Review before the DOJ which he verified on April 10, 2013, which led to the issuance of the "Baraan Resolution" dated 15 July 2013, resulting in the directive to exclude him in the criminal Information for Murder.
>
> 5. He participated in the proceedings before the RTC, Mambusao, Capiz which led to the issuance of the Orders dated 4 November 2013 and 21 May 2014, for the lifting/suspension of the Warrant of Arrest against him and finally, the dismissal of the Murder charge against him. (Citations omitted)[37]

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[34] *Rollo* (G.R. No. 212615), p. 57.

[35] *Id.* at 58.

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

[37] *Id.* at 354-355.

Moreover, there was no proof to show the efforts exerted by the police to locate Labao, Jr. and that despite such efforts, the warrant of arrest against him could not be served. Although Labao, Jr. had executed a Special Power of Attorney (SPA) in favor of his wife authorizing her "to appear in all stages of the proceedings, if required, and if necessary, to testify and/or submit appropriate documentary evidence," again, it was not shown that the SPA was executed solely for the purpose of evading arrest.

***Grave Abuse of Discretion on the Part of COMELEC***

Given the foregoing, this Court finds that the pieces of evidence on record do not sufficiently establish Labao, Jr.'s intention to evade being prosecuted for a criminal charge that will warrant a sweeping conclusion that Labao, Jr., at the time, was evading prosecution so as to disqualify him as a fugitive from justice from running for public office.[38] Moreover, the dearth of evidence pointing to such intent hardly justifies the would-be disenfranchisement of 12,117 innocent voters of Mambusao, Capiz who voted for Labao, Jr.

Thus, the COMELEC *En Banc* Resolution dated May 21, 2014 should be struck down for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. This Court's action finds anchor in *Jalover v. Osmeña*,[39] where it was explained that:

> In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction. (Citations omitted.)

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[38] *Id.* at 355.

[39] G.R. No. 209286, September 23, 2014, 736 SCRA 267, 280.

This Court is hard-pressed to label Labao, Jr.'s actions as evasion of prosecution for him to be considered a fugitive from justice that would disqualify him to run as a candidate for Mayor of Mambusao, Capiz.

**Re: G.R. No. 212989**

In view of the findings of fact and law arrived at in G.R. No. 212615, it is no longer necessary to discuss the issues raised in the petition of Sharon who is seeking to succeed Labao, Jr. as Mayor of Mambusao, Capiz. Hence, the same is dismissed.

**WHEREFORE,** premises considered, the petition filed by Leodegario A. Labao, Jr. in G.R. No. 212615 is **GRANTED**. Consequently, the petition filed by Sharon Grace Martinez-Martelino in G.R. No. 212989 is **DISMISSED** for being moot and academic.

**SO ORDERED.**

*Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen,* and *Caguioa, JJ.,* concur.

*Jardeleza, J.,* no part, prior OSG action.

*Brion, J.,* on leave.

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**EN BANC**

[G.R. No. 220598. July 19, 2016]

**GLORIA MACAPAGAL-ARROYO,** *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and THE SANDIGANBAYAN (First Division),** *respondents.*

[G.R. No. 220953. July 19, 2016]

**BENIGNO B. AGUAS,** *petitioner, vs.* **SANDIGANBAYAN (First Division),** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE COURT CANNOT BE DEPRIVED OF ITS JURISDICTION TO CORRECT GRAVE ABUSE OF DISCRETION COMMITTED BY THE SANDIGANBAYAN. —** The Court holds that it should take cognizance of the petitions for *certiorari* because the *Sandiganbayan* gravely abused its discretion amounting to lack or excess of jurisdiction. x x x The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion *whenever* and *wherever* it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of *certiorari* when the denial was tainted with grave abuse of discretion.

2. **CRIMINAL LAW; CONSPIRACY; DISCUSSED.—** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it. In this jurisdiction, conspiracy is either a crime in itself or a mere means to commit a crime. As a rule, conspiracy is not a crime unless the law considers it a crime, and prescribes a penalty for it. x x x When conspiracy is a means to commit a crime, it is indispensable that the agreement to commit the crime among all the conspirators, or their community of criminal design must be alleged and competently shown. x x x In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. x x x Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a

joint purpose, a concert of action and a community of interest. But to be considered a part of the conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his own acts.

3. **ID.; ID.; TWO NUANCES OF APPRECIATING CONSPIRACY AS A MEANS TO COMMIT A CRIME; WHEEL CONSPIRACY AND CHAIN CONSPIRACY.—** In *Estrada v. Sandiganbayan*, the Court recognized two nuances of appreciating conspiracy as a means to commit a crime, the *wheel conspiracy* and the *chain conspiracy*. The wheel conspiracy occurs when there is a single person or group (the hub) dealing individually with two or more other persons or groups (the spokes). The spoke typically interacts with the hub rather than with another spoke. In the event that the spoke shares a common purpose to succeed, there is a single conspiracy. However, in the instances when each spoke is unconcerned with the success of the other spokes, there are multiple conspiracies. x x x The chain conspiracy recognized in *Estrada v. Sandiganbayan* exists when there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer. This involves individuals linked together in a vertical chain to achieve a criminal objective. x x x Once the State proved the conspiracy as a means to commit a crime, each co-conspirator is as criminally liable as the others, for the act of one is the act of all. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act. Otherwise, the criminal liability of each accused is individual and independent.

4. **ID.; PLUNDER LAW (RA NO. 7080); A PARTICULAR PUBLIC OFFICER MUST BE IDENTIFIED AS THE ONE WHO AMASSED, ACQUIRED, ACCUMULATED ILL-GOTTEN WEALTH.—** The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family,

relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Section 1(d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy in the information was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution. This interpretation is supported by *Estrada v. Sandiganbayan*, where the Court explained the nature of the conspiracy charge and the necessity for the main plunderer for whose benefit the amassment, accumulation and acquisition was made x x x Such identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for. The main purpose of requiring the various elements of the crime charged to be set out in the information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged.

5. **ID.; ID.; THE *CORPUS DELICTI* OF PLUNDER IS THE AMASSMENT, ACCUMULATION OR ACQUISITION OF ILL-GOTTEN WEALTH VALUED AT NOT LESS THAN ₱50,000,000.00.—** The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than ₱50,000,000.00. The failure to establish the *corpus delicti* should lead to the dismissal of the criminal prosecution.

6. **ID.; ID.; RAIDS ON THE PUBLIC TREASURY; REQUIRES THE RAIDER TO USE THE PROPERTY TAKEN IMPLIEDLY FOR PERSONAL BENEFIT.—** The phrase *raids on the public treasury* is found in Section 1 (d) of R.A. No. 7080, which provides: Section 1. *Definition of Terms*. –

x x x d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes: 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; x x x To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation, conversion, misuse or malversation of public funds*. x x x To *convert* connotes the act of using or disposing of another's property as if it were one's own; *to misappropriate* means to own, to take something for one's own benefit; *misuse* means "a good, substance, privilege, or right used improperly, unforeseeably, or not as intended;" and *malversation* occurs when "any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially." The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property taken, the phrase *raids on the public treasury* similarly requires such use of the property taken. Accordingly, the *Sandiganbayan* gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of *raids on the public treasury*. Pursuant to the maxim of *noscitur a sociis*, *raids on the public treasury* requires the raider to use the property taken impliedly for his personal benefit.

**PERLAS-BERNABE, *J.*, *separate concurring and dissenting opinion*:**

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GENERALLY PROHIBITED TO ASSAIL AN ORDER DENYING A DEMURRER TO EVIDENCE EXCEPT PATENT ERRORS THEREIN AMOUNTING TO GRAVE ABUSE OF DISCRETION.—** A petition for *certiorari* is generally prohibited to assail an order denying a demurrer to evidence. Section 23, Rule 119 of the Revised Rules of Criminal

Procedure states: Section 23. *Demurrer to evidence*.– x x x The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment. However, case law has recognized certain exceptions to this rule. For instance, in *Nicolas v. Sandiganbayan,* x x x [d]espite the prohibition foisted in Section 23, Rule 119 of the Revised Rules of Criminal Procedure, the Court may take cognizance of the petitions for *certiorari* against orders denying demurrers to evidence if only to correct an "oppressive exercise of judicial authority" which is manifested by patent errors in the assailed ruling amounting to grave abuse of discretion.

2. **CRIMINAL LAW; PLUNDER LAW (RA 7080, AS AMENDED BY RA 7659); ELEMENTS; CHARGE OF PLUNDER SUFFICIENT WHERE THE ULTIMATE FACTS CONSTITUTIVE OF THE CRIME'S ELEMENTS WERE STATED WITH REASONABLE PARTICULARITY.—** In order for the accused to be sufficiently apprised of the charge of Plunder, it is essential that the ultimate facts constitutive of the crime's elements be stated in the Information with reasonable particularity. Plunder, as defined in RA 7080, as amended by RA 7659, has the following elements: **<u>first</u>**, that the offender is a **public officer**; **<u>second</u>**, that he **amasses, accumulates or acquires ill-gotten wealth** through a **combination or series of overt or criminal acts** described in Section 1 (d); and **<u>third</u>**, that the aggregate amount or total **value of the ill-gotten wealth is at least ₱50,000,000.00.**

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; IN CASE OF PLUNDER HINGED ON CONSPIRACY, THE IDENTIFICATION OF MAIN PLUNDERER IS NOT A CONSTITUTIVE ELEMENT.—** [I]t is of no moment that the main plunderer was not identified on the face of the Information. Contrary to the *ponencia*'s stand, the identification of a main plunderer is not a constitutive element of the crime of Plunder. In fact, the charge in this case is hinged on an allegation of conspiracy, which connotes that all had participated in the criminal design. Under the Revised Rules of Criminal Procedure, to be considered as valid and sufficient, an Information must state the name of the accused; the designation of the offense given by the statute; **<u>the acts or omissions complained of as constituting the offense</u>**; the name

of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. All that should appear in the Information are the ultimate facts reflecting the elements of the crime charged, and not the evidentiary facts from which the conclusion of who was the main plunderer or who actually amassed, acquired, or accumulated the subject ill-gotten wealth may be drawn. Verily, the degree of particularity required for an Information to be sufficient is only based on the gauge of reasonable certainty — that is, whether the accused is informed in intelligible terms of the offense charged, as in this case.

4. **ID.; ID.; TRIAL; DEMURRER TO EVIDENCE; THE PARTY DEMURRING CHALLENGES THE SUFFICIENCY OF THE WHOLE EVIDENCE TO SUSTAIN A VERDICT.—** In concept, a demurrer to evidence is "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. **The party demurring challenges the sufficiency of the whole evidence to sustain a verdict**. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. x x x **Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances.** To be considered sufficient therefore, the evidence must prove: (*a*) the commission of the crime, and (*b*) the precise degree of participation therein by the accused. Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt."

5. **CRIMINAL LAW; CONSPIRACY; FOR A CONSPIRACY CHARGE TO PROSPER, IT IS IMPORTANT TO SHOW THAT THE ACCUSED HAD PRIOR KNOWLEDGE OF THE CRIMINAL DESIGN; OTHERWISE, IT WOULD HARDLY BE THE CASE THAT HIS ALLEGED PARTICIPATION WOULD BE IN FURTHERANCE OF SUCH DESIGN.— For a conspiracy charge to prosper, it is important to show that the accused had prior knowledge**

**of the criminal design; otherwise, it would hardly be the case that his alleged participation would be in furtherance of such design.** In theory, conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following requisites: (1) two or more persons came to an agreement; (2) the agreement concerned the commission of a crime; and (3) the execution of the felony was decided upon. "***Prior agreement or assent is usually inferred from the acts of the accused showing concerted action, common design and objective, actual cooperation, and concurrence of sentiments or community of interests.***"

6. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; PRESUMPTION OF INNOCENCE UNTIL PROVEN GUILTY BEYOND REASONABLE DOUBT.—** Case law instructs that "[i]ndeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right." Also, everyone is entitled to the presumption of good faith.

7. **CRIMINAL LAW; PLUNDER LAW; RAID OF PUBLIC TREASURY; DOES NOT REQUIRE THAT PERSONAL BENEFIT BE DERIVED BY THE PUBLIC OFFICER SO CHARGED.—** As a final point, allow me to submit my reservations on the *ponencia*'s characterization of the concept of a "raid of public treasury" under the auspices of Section 1 (d) of the Plunder Law, x x x I disagree that the said concept requires x x x — that personal benefit be derived by the public officer/s so charged. The gravamen of plunder is the amassing, accumulating, or acquiring of ill-gotten wealth by a public officer. Section 1 (d) of the Plunder Law states the multifarious modes under which the amassment, accumulation, or acquisition of public funds would be tantamount to the Plunder of ill-gotten wealth. There is simply no reasonable relation that the requirement of personal benefit commonly inheres in the sense of the words accompanying the predicate act of "raids on public treasury." For one, "misuse" is such a broad term that would

encompass the gamut of illegal means and methods for which public funds may be amassed, accumulated, or acquired, without necessarily meaning that the public officer so amassing, accumulating, or acquiring the same had derived any personal benefit therefrom.

**SERENO, *C.J.*, *dissenting opinion*:**

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; WHEN THE ALLEGATIONS THEREIN MAY BE DEEMED SUFFICIENT TO CONSTITUTE CONSPIRACY.—** *Estrada v. Sandiganbayan (2002 Estrada)* is instructive as to when the allegations in the Information may be deemed sufficient to constitute conspiracy. In that case, We stated: [I]t is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc.; or (2) by allegation of basic facts constituting the conspiracy in a manner that a person of common understanding would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.

2. **CRIMINAL LAW; PLUNDER LAW; RULE OF EVIDENCE UNDER SECTION 4; ESTABLISHMENT BEYOND REASONABLE DOUBT OF "A PATTERN OF OVERT OR CRIMINAL ACTS INDICATIVE OF THE OVERALL UNLAWFUL SCHEME OR CONSPIRACY" DEEMED SUFFICIENT; ELUCIDATED.—** Section 4 of the Plunder Law [provides for the] *Rule of Evidence.* – x x x [Thus,] for purposes of proving the crime of plunder, proof of each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth is not required. Section 4 deems sufficient the establishment beyond reasonable doubt of "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy." *Estrada v. Sandiganbayan (2001 Estrada)* provides an instructive discussion on "pattern" by using the provisions of the Anti-Plunder Law: [A] 'pattern' *consists of at least a combination or series of overt or criminal acts enumerated in subsections* (1) to (6) of Sec. 1 (d). Secondly,

pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is *directed towards a common purpose or goal which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth.* And thirdly, there must either be an *'overall unlawful scheme'* or '*conspiracy*' to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public officer and others conniving with him, follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal. By "series," *Estrada* teaches that there must be at least two overt or criminal acts falling under the same category of enumeration found in Section 1, paragraph (d) of the Anti-Plunder Law, such as misappropriation, malversation and raids on the public treasury, all of which fall under Section 1, paragraph (d), subparagraph (1) of the law. With respect to "combination," *Estrada* requires at least two acts that fall under the different categories of the enumeration given by Section 1, paragraph (d) of the Plunder Law. Examples would be raids on the public treasury under Section 1, paragraph (d), subparagraph (1), and fraudulent conveyance of assets belonging to the National Government under Section 1, paragraph (d), subparagraph (3).

3. **ID.; CONSPIRACY; MAY BE MADE BY CHAIN OF CIRCUMSTANCES.—** Conspiracy may be made by evidence of a chain of circumstances. It may be established from the **"mode, method, and manner** by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a **joint purpose and design, concerted action and community of interest."** Our pronouncement in *Alvizo v. Sandiganbayan* is instructive: Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently

independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.

4. **ID.; PLUNDER LAW; FAILURE TO NAME THE MAIN PLUNDERER IN THE INFORMATION IS NOT CRUCIAL.—** [T]he failure of the Information to name the main plunderer in particular is not crucial. Section 2 of the Plunder Law does not require a mastermind or a main recipient when it comes to plunder as a collective act: x x x [A]ll that is required by Section 2 is that there is a public officer who acts in connivance with other offenders in a common design to amass, accumulate or acquire ill-gotten wealth, the aggregate amount of which is at least ₱50 Million. In other words, it is only the conspiracy that needs to be alleged in an Information. In a conspiracy, the act of one is the act of all. Every conspirator becomes a principal even if the person did not participate in the actual commission of every act constituting the crime. x x x It is thus not crucial to identify the main plunderer in the Information, so long as conspiracy is properly alleged and established. Identification in the Information of the main plunderer or the accused who acquires the greatest loot is immaterial, as it suffices that any one or two of the conspirators are proven to have transferred the plundered amount to themselves. x x x What should be underscored at this juncture is that in prosecution for plunder, it is enough that one or more of the conspirators must be shown to have gained material possession of at least ₱50 million through any or a combination or a series of overt criminal acts, or similar schemes or means enumerated in the law and stated in the Information.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; DEMURRER TO EVIDENCE; APPROPRIATE REMEDY FOR DENIAL THEREOF IS TO PROCEED WITH THE TRIAL, AFTER WHICH ACCUSED MAY FILE APPEAL FROM THE JUDGMENT OF THE LOWER COURT.—** This Court has made a pronouncement on the nature of a demurrer to evidence in this wise: [A d]emurrer to evidence is an objection by one

of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. **The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.** What constitutes sufficient evidence has also been defined as follows: Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused. When there is no showing of such grave abuse, certiorari is not the proper remedy. Rather, the appropriate recourse from an order denying a demurrer to evidence is for the court to proceed with the trial, after which the accused may file an appeal from the judgment of the lower court rendered after such trial.

**LEONEN, *J.*, *dissenting opinion*:**

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; IN DENIAL THEREOF, TRIAL MUST PROCEED FOR JUDGMENT ON THE MERITS TO BE RENDERED.—** The rule on demurrer to evidence in criminal proceedings is clear and categorical. If the demurrer to evidence is denied, trial must proceed and, thereafter, a judgment on the merits rendered. If the accused is convicted, he or she may then assail the adverse judgment, not the order denying demurrer to evidence.
2. **CRIMINAL LAW; PLUNDER LAW (RA 7080); ELEMENTS OF THE CRIME OF PLUNDER; CLARIFIED IN THE CASE OF *ESTRADA V. SANDIGANBAYAN*.—** *Estrada v. Sandiganbayan* has clarified the elements that must be established for a successful prosecution of this offense: Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. Thus – 1. That the offender is a public officer who acts by himself

or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; 2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and, 3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.

3. **ID.; ID.; PLUNDER MAY BE A COLLECTIVE ACT AND DOES NOT REQUIRE A CENTRAL ACTOR.—** By definition, plunder may be a collective act, just as well as it may be an individual act. Section 2 of Republic Act No. 7080 explicitly states that plunder may be committed "in connivance": ***Section 2. Definition of the Crime of Plunder; Penalties. —*** Any public officer who, by himself or *in connivance* with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons[.] In stating that plunder may be committed collectively, Section 2 does not require a central actor who animates the actions of others or to whom the proceeds of plunder are funneled. It does, however, speak of "[a]ny public officer." This reference is crucial to the determination of plunder as essentially an offense

committed by a public officer. Plunder is, therefore, akin to the offenses falling under Title VII of the Revised Penal Code. Likewise, this reference highlights the act of plundering as essentially one that is accomplished by taking advantage of public office or other such instrumentalities. Contrary to what the ponencia postulates, there is no need for a "main plunderer." Section 2 does not require plunder to be centralized, whether in terms of its planning and execution, or in terms of its benefits. All it requires is for the offenders to act out of a common design to amass, accumulate, or acquire ill-gotten wealth, such that the aggregate amount obtained is at least ₱50,000,000.00. Section 1 (d) of Republic Act No. 7080, in defining "ill-gotten," no longer even speaks specifically of a "public officer." In identifying the possessor of ill-gotten wealth, Section 1(d) merely refers to "any person": x x x With the allegation of conspiracy as its crux, each of the accused was charged as a principal.

4. **ID.; ID.; RULE OF EVIDENCE; SHOWING A PATTERN OF OVERT OR CRIMINAL ACTS INDICATIVE OF THE OVERALL UNLAWFUL SCHEME OR CONSPIRACY IS SUFFICIENT.—** Section 4 of Republic Act No. 7080 provides: ***Section 4. Rule of Evidence***. – For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, *it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.* The sufficiency of showing "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" is particularly crucial. It emphasizes how absence of direct proof of every conspirator's awareness of, as well as participation and assent in, every single phase of the overall conspiratorial design is not fatal to a group of conspirators' prosecution and conviction for plunder.

5. **ID.; ID.; EXISTENCE OF A COMBINATION OR SERIES OF OVERT OR CRIMINAL ACTS; LESSER OFFENSE CAN BE INCLUDED IN PLUNDER AND NEED NOT BE CHARGED SEPARATELY.—** At the heart of the offense of plunder is the existence of "a combination or series of overt or criminal acts." *Estrada v. Sandiganbayan* clarified that "to constitute a "series" there must be two (2) or more overt or

criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1).” Accordingly, this Court has consistently held that the lesser offense of malversation can be included in plunder when the amount amassed reaches at least ₱50,000,000.00. This Court’s statements in *Estrada v. Sandiganbayan* are an acknowledgement of how the predicate acts of bribery and malversation (if applicable) need not be charged under separate informations when one has already been charged with plunder: x x x In *Atty. Serapio v. Sandiganbayan*, the accused assailed the information for charging more than one offense: bribery, malversation of public funds or property, and violations of Sec. 3(e) of Republic Act No. 3019 and Section 7(d) of Republic Act No. 6713. This Court observed that “the acts alleged in the information are not separate or independent offenses, but are predicate acts of the crime of plunder.”

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; DEMURRER TO EVIDENCE; ELUCIDATED.—** Rule 119, Section 23 of the Revised Rules on Criminal Procedure articulates the rules governing demurrers to evidence in criminal proceedings: x x x A demurrer to evidence is “an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue.” It works by “challeng[ing] the sufficiency of the whole evidence to sustain a verdict.” In resolving the demurrer to evidence, a trial court is not as yet compelled to rule on the basis of proof beyond reasonable doubt – the requisite quantum of proof for *conviction* in a criminal proceeding – but “is merely required to ascertain whether there is *competent or sufficient evidence* to sustain the indictment or to support a verdict of guilt.” A demurrer to evidence is a device to effect one’s right to a speedy trial and to speedy disposition of cases. x x x Indeed, if there is not even “competent or sufficient evidence” to sustain a prima facie case, there cannot be proof beyond reasonable doubt to ultimately justify the deprivation of one’s life, liberty, and/or property, which ensues from a criminal conviction. There is, then, no need for even burdening the defendant with laying out the entirety of his or her defense. If proof beyond reasonable doubt is so far out of the prosecution’s reach that it cannot even make a prima facie case, the accused

may as well be acquitted. On the part of the court before which the case is pending, it may likewise then be disburdened of the rigors of a full trial. A demurrer to evidence thereby incidentally serves the interest of judicial economy.

7. **ID.; ID.; ID.; ID.; IN DENIAL THEREOF, THE CORRECTNESS MAY ONLY BE ASCERTAINED WHEN THE CONSIDERATION OF EVIDENCE HAS BEEN CONSUMMATED.—** The competence to determine whether trial must continue and judgment on the merits eventually rendered is exclusively lodged in the trial court: x x x This is because it is before the trial court that evidence is presented and the facts are unraveled. By its very nature as a "trial" court, the adjudicatory body has the opportunity to personally observe the demeanor of witnesses delivering testimonial evidence, as well as to peruse the otherwise sinuous mass of object and documentary evidence. It is the tribunal with the capacity to admit and observe and, in conjunction with this case, the principal capacity to test and counterpoise. Thus, it entertains and rules on objections to evidence. Therefore, it follows that if a demurrer to evidence is denied, the correctness of this denial may only be ascertained when the consideration of evidence has been consummated. There is no better way of disproving the soundness of the trial court's having opted to continue with the proceedings than the entire body of evidence: x x x Accordingly, in the event that a demurrer to evidence is denied, "the remedy is x x x to continue with the case in due course and *when an unfavorable verdict is handed down*, to take an appeal in the manner authorized by law." The proper subject of the appeal is the trial court's judgment convicting the accused, not its prior order denying the demurrer. The denial order is but an interlocutory order rendered during the pendency of the case, while the judgment of conviction is the "judgment or final order that completely disposes of the case" at the level of the trial court.

8. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; DUTY TO DETERMINE GRAVE ABUSE OF DISCRETION ON THE PART OF ANY BRANCH OR INSTRUMENTALITY OF THE GOVERNMENT VIA PETITION FOR CERTIORARI MUST BE WIELDED DELICATELY.—** It is true that the Revised Rules on Criminal Procedure is subordinate to and must be read in harmony with

the Constitution. Article VIII, Section 1 of the 1987 Constitution spells out the injunction that "[j]udicial power includes the duty of the courts of justice . . . to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of ***any branch or instrumentality*** of the Government." Judicial review of a denial order is, therefore, still possible. However, the review must be made on the narrowest parameters, consistent with the Constitution's own injunction and the basic nature of the remedial vehicle for review, i.e., a petition for certiorari: x x x Relief from an order of denial shall be allowed only on the basis of grave abuse of discretion amounting to lack or excess of jurisdiction. x x x Apart from grave abuse of discretion, recourse to a petition for certiorari must be impelled by a positive finding that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." x x x The power of judicial review through a petition for certiorari must be wielded delicately. The guiding temperament must be one of deference, giving ample recognition to the unique competence of trial courts to enable them to freely discharge their functions without being inhibited by the looming, disapproving stance of an overzealous superior court.

9. **ID.; ID.; SANDIGANBAYAN; JURISDICTION OVER CRIMES COMMITTED BY PUBLIC OFFICERS, RESPECTED.—** If the legal system is to lend truth to the Constitution's declaration that "[p]ublic office is a public trust," all means must be adopted and all obstructions cleared so as to enable the unimpaired application of mechanisms for demanding accountability from those who have committed themselves to the calling of public service. This is especially true in prosecutions for plunder. It is an offense so debased, it may as well be characterized as the apex of crimes chargeable against public officers: x x x This is especially true of prosecution before the Sandiganbayan. Not only is the Sandiganbayan the trial court exercising exclusive, original jurisdiction over specified crimes committed by public officers; it is also a court that exists by express constitutional fiat. x x x This "expertise-by-constitutional-design" compels a high degree of respect for its findings and conclusions within the framework of its place in the hierarchy of courts. Guided by these principles, animated by the wisdom of deferring to the Sandiganbayan's competence – both as a trial court and as the constitutionally

ordained anti-graft court – and working within the previously discussed parameters, this Court must deny the consolidated Petitions. x x x By nature, a petition for certiorari does not enable us to engage in the "correction of evaluation of evidence." In a Rule 65 petition, we are principally equipped with the parties' submissions. It is true that in such petitions, we may also require the elevation of the records of the respondent tribunal or officer (which was done in this case). Still, these records are an inadequate substitute for the entire enterprise that led the trial court – in this case, the Sandiganbayan – to its conclusions. The more judicious course of action is to let trial proceed at the Sandiganbayan.

**APPEARANCES OF COUNSEL**

*Flaminiano Arroyo and Dueñas, Estelito P. Mendoza, Susan A. Mendoza, Orlando A. Santiago, Lorenzo G. Timbol, Hyacinth E. Rafael-Antonio* and *Leo Aries Wynner O. Santos* for petitioner in G.R. No. 220598.

*Moises S. Tolentino* for petitioner in G.R. No. 220953.

*The Solicitor General* for public respondents.

**D E C I S I O N**

**BERSAMIN, *J*.:**

We resolve the consolidated petitions for *certiorari* separately brought to assail and annul the resolutions issued on April 6, 2015[1] and September 10, 2015,[2] whereby the *Sandiganbayan* respectively denied their demurrer to evidence, and their motions for reconsideration, asserting such denials to be tainted with grave abuse of discretion amounting to lack or excess of jurisdiction.

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[1] *Rollo*, Vol. I, pp. 139-194; penned by Associate Justice Rafael R. Lagos and concurred by Associate Justices Efren N. De La Cruz and Napoleon E. Inoturan. Associate Justices Rodolfo A. Ponferrada and Alex L. Quiroz submitted their respective concurring and dissenting opinion.

[2] *Id.* at 195-211.

## Antecedents

On July 10, 2012, the Ombudsman charged in the *Sandiganbayan* former President Gloria Macapagal-Arroyo (GMA); Philippine Charity Sweepstakes Office (PCSO) Budget and Accounts Officer Benigno Aguas; PCSO General Manager and Vice Chairman Rosario C. Uriarte; PCSO Chairman of the Board of Directors Sergio O. Valencia; Members of the PCSO Board of Directors, namely: Manuel L. Morato, Jose R. Taruc V, Raymundo T. Roquero, and Ma. Fatima A.S. Valdes; Commission on Audit (COA) Chairman Reynaldo A. Villar; and COA Head of Intelligence/Confidential Fund Fraud Audit Unit Nilda B. Plaras with plunder. The case was docketed as Criminal Case No. SB-12-CRM-0174 and assigned to the First Division of the *Sandiganbayan*.

The information[3] reads:

The undersigned Assistant Ombudsman and Graft Investigation and Prosecution Officer III, Office of the Ombudsman, hereby accuse GLORIA MACAPAGAL-ARROYO, ROSARIO C. URIARTE, SERGIO O. VALENCIA, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, BENIGNO B. AGUAS, REYNALDO A. VILLAR and NILDA B. PLARAS, of the crime of **PLUNDER**, as defined by, and penalized under Section 2 of Republic Act (R.A.) No. 7080, as amended by R.A. No. 7659, committed, as follows:

That during the period from January 2008 to June 2010 or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, accused GLORIA MACAPAGAL-ARROYO, then the President of the Philippines, ROSARIO C. URIARTE, then General Manager and Vice Chairman, SERGIO O. VALENCIA, then Chairman of the Board of Directors, MANUEL L. MORATO, JOSE R. TARUC V, RAYMUNDO T. ROQUERO, MA. FATIMA A.S. VALDES, then members of the Board of Directors, BENIGNO B. AGUAS, then Budget and Accounts Manager, all of the Philippine Charity Sweepstakes Office (PCSO), REYNALDO A. VILLAR, then Chairman, and NILDA B. PLARAS, then Head of Intelligence/Confidential Fund Fraud Audit Unit, both

[3] *Id.* at 305-307-A.

of the Commission on Audit, all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, conniving, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire. Directly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows:

(a) diverting in several instances, funds from the operating budget of PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restrictions, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit;

(b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures; and

(c) taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines.

CONTRARY TO LAW.

By the end of October 2012, the *Sandiganbayan* already acquired jurisdiction over GMA, Valencia, Morato and Aguas. Plaras, on the other hand, was able to secure a temporary restraining order (TRO) from this Court in *Plaras v. Sandiganbayan* docketed as G.R. Nos. 203693-94. Insofar as Roquero is concerned, the *Sandiganbayan* acquired jurisdiction as to him by the early part of 2013. Uriarte and Valdes remained at large.

Thereafter, several of the accused separately filed their respective petitions for bail. On June 6, 2013, the *Sandiganbayan* granted the petitions for bail of Valencia, Morato and Roquero upon finding that the evidence of guilt against them was not strong.[4] In the case of petitioners GMA and Aguas, the *Sandiganbayan*, through the resolution dated November 5, 2013, denied their petitions for bail on the ground that the evidence of guilt against them was strong.[5] The motions for reconsideration filed by GMA and Aguas were denied by the *Sandiganbayan* on February 19, 2014.[6] Accordingly, GMA assailed the denial of her petition for bail in this Court, but her challenge has remained pending and unresolved to date.

Personal jurisdiction over Taruc and Villar was acquired by the *Sandiganbayan* in 2014. Thereafter, said accused sought to be granted bail, and their motions were granted on different dates, specifically on March 31, 2014[7] and May 9, 2014,[8] respectively.

The case proceeded to trial, at which the State presented Atty. Aleta Tolentino as its main witness against all the accused. The *Sandiganbayan* rendered the following summary of her testimony and evidence in its resolution dated November 5, 2013 denying the petitions for bail of GMA and Aguas, to wit:

> She is a certified public accountant and a lawyer. She is a member of the Philippine Institute of Certified Public Accountants and the Integrated Bar of the Philippines. She has been a CPA for 30 years and a lawyer for 20 years. She has practiced accountancy and law. She became accounting manager of several companies. She has also taught subjects in University of Santo Tomas, Manuel L. Quezon University, Adamson University and the Ateneo de Manila Graduate School. She currently teaches Economics, Taxation and Land Reform.

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[4] *Id.* at 415-459.

[5] *Id.* at 450-510.

[6] *Id.* at 512-523.

[7] *Rollo*, Vol. II, pp. 526-580.

[8] *Id.* at 581-586.

Presently, she is a Member of the Board of Directors of the PCSO. The Board appointed her as Chairman of an Audit Committee. The audit review proceeded when she reviewed the COA Annual Reports of the PCSO for 2006, 2007, 2008 and 2009 (Exhibits "D", "E", "F" and "G", respectively), and the annual financial statements contained therein for the years 2005 to 2009. The reports were given to them by the COA. These are transmitted to the PCSO annually after the subject year of audit.

One of her major findings was that the former management of the PCSO was commingling the charity fund, the prize fund and the operating fund. By commingling she means that the funds were maintained in only one main account. This violates Section 6 of Republic Act 1169 (PCSO Charter) and generally accepted accounting principles.

The Audit Committee also found out that there was excessive disbursement of the Confidential and Intelligence Fund (CIF). There were also excessive disbursements for advertising expenses. The internal audit department was also merged with the budget and accounting department, which is a violation of internal audit rules.

There was excessive disbursement of the CIF because the PCSO was given only ₱10 million in 2002, i.e., ₱5 million for the Office of the Chairman and ₱5 million for the Office of the General Manager. Such allocation was based on the letters of then Chairman Lopez (Exh. "I") and then General Manager Golpeo (Exh. "J"), asking for ₱5 million intelligence fund each. Both were dated February 21, 2000, and sent to then President Estrada, who approved them. This allocation should have been the basis for the original allocation of the CIF in the PCSO, but there were several subsequent requests made by the General Manager during the time of, and which were approved by, former President Arroyo.

The allocation in excess of ₱10 million was in violation of the PCSO Charter. PCSO did not have a budget for this. They were working on a deficit from 2004 to 2009. The charter allows only 15% of the revenue as operating fund, which was already exceeded. The financial statements indicate that they were operating on a deficit in the years 2006 to 2009.

It is within the power of the General Manager to ask for additional funds from the President, but there should be a budget for it. The CIF should come from the operating fund, such that, when there is no more operating fund, the other funds cannot be used.

The funds were maintained in a commingled main account and PCSO did not have a registry of budget utilization. The excess was not taken from the operating fund, but from the prize fund and the charity fund.

In 2005, the deficit was ₱916 million; in 2006, ₱1,000,078,683.23. One of the causes of the deficit for 2006 was the CIF expense of ₱215 million, which was in excess of the approved allocation of ₱10 million. The net cash provided by operating expenses in 2006 is negative, which means that there were more expenses than what was received.

In the 2007 COA report, it was found that there was still no deposit to the prize and charity funds. The COA made a recommendation regarding the deposits in one main account. There were also excessive disbursements of CIF amounting to ₱77,478,705.

She received a copy of the PCSO corporate operating budget (COB) for the year 2008 in 2010 because she was already a member of its Board of Directors. The 2008 approved COB has a comparative analysis of the actual budget for 2007 (Exh. "K"). It is stated there that the budget for CIF in 2007 is only ₱25,480,550. But the financial statements reflect ₱77 million. The budget was prepared and signed by then PCSO General Manager Rosario Uriarte. It had accompanying Board Resolution No. 305, Series of 2008, which was approved by then Chairperson Valencia, and board members Valdes, Morato, Domingo, and attested to by Board Secretary Atty. Ronald T. Reyes.

In the 2008 COA report, it was noted that there was still no deposit to the prize and charity funds, adverted in the 2007 COA report. There was already a recommendation by the COA to separate the deposits or funds in 2007. But the COA noted that this was not followed. The financial statements show the Confidential and the Extra-Ordinary Miscellaneous Expenses account is ₱38,293,137, which is more than the ₱10 million that was approved.

In the Comparative Income Statement (Exh. "K"), the 2008 Confidential/Intelligence Expense budget was approved for ₱28 million. The Confidential and Extra-Ordinary Miscellaneous Expenses is the account being used for confidential and intelligence expenses. The amount in the financial statements is over the budgeted amount of ₱28 million. Further, the real disbursement is more than that, based on a summary of expenditures she had asked the treasurer to prepare.

In the Comparative Income Statement for 2009 Budget against the 2008 Actual Budget (Exh. "L"), the budget for CIF and expenses was ₱60 million.

In the 2009 COA report, it was noted that there was still no deposit to the prize and charity funds, despite the instruction or recommendation of COA. The funds were still deposited in one account. The COA observation in 2007 states that there is juggling or commingling of funds.

After she had concluded the audit review, she reported her findings to the Board of Directors in one of their executive meetings. The Board instructed her to go in-depth in the investigation of the disbursements of CIF.

The Audit Committee also asked Aguas why there were disbursements in excess of ₱10 million. He explained that there were board resolutions confirming additional CIF which were approved by former President Arroyo. Aguas mentioned this in one of their meetings with the directors and corporate secretary. The board secretary, Atty. Ed Araullo, gave them the records of those resolutions.

In the records that Araullo submitted to her, it appears that Uriarte would ask for additional CIF, by letter and President Arroyo approves it by affixing her signature on that same letter-request. There were seven letters or memoranda to then President Arroyo, with the subject "Request for Intelligence Fund."

She then asked their Treasurer, Mercy Hinayon, to give her a summary of all the disbursements from CIF from 2007 to 2010. The total of all the amounts in the summaries for three years is ₱365,997,915.

After receiving the summaries of the disbursed checks, she asked Hinayon to give her the checks or copies thereof. She also asked Dorothy Robles, Budget and Accounting Manager, to give her the corresponding vouchers. Only two original checks were given to her, as the rest were with the bank. She asked her to request certified true copies of the checks.

They were then called to the Senate Blue Ribbon Committee, which was then investigating the operation of PCSO, including the CIF. She was invited as a resource speaker in an invitation from Chairman Teofisto Guingona III (Exh. "DD"). Before the hearing, the Committee

Chairman went to the PCSO and got some documents regarding the subject matter being investigated. Araullo was tasked to prepare all the documents needed by the Committee. These documents included the CIF summary of disbursements, letters of Uriarte and the approval of the former president.

She attended whenever there were committee hearings. Among those who also attended were the incoming members if the PCSO Board Directors and the directors. Accused Valencia and Aguas were also present in some hearings as resources speakers. They were invited in connection with the past disbursements of PCSO related to advertising expenses, CIF, vehicles for the bishops, and the commingling of funds.

The proceedings in the Committee were recorded and she secured a copy of the transcript of stenographic notes from the Office of the Blue Ribbon Committee. In the proceeding on June 7, 2011 (Exh. "EE"), Uriarte testified. The witness was about two to three meters away from Uriarte when the latter testified, and using a microphone.

According to the witness, Uriarte testified that all the confidential intelligence projects she had proposed were approved by President Arroyo; all the requests she gave to the President were approved and signed by the latter personally in her (Uriarte's) presence; and all the documents pertaining to the CIF were submitted to President Arroyo. On the other hand, Valencia and Taruc said they did not know about the projects. Statements before the Committee are under oath.

After the Committee hearings, she then referred to the laws and regulations involved to check whether the disbursements were in accordance with law. One of the duties and responsibilities of the audit committee was to verify compliance with the laws.

She considered the following laws: R.A. 1169, as amended (PCSO Charter); P.D. 1445 (COA Code); LOI 1282; COA Circular 92-385, as amended by Circular 2003-002, which provides the procedure for approval of disbursements and liquidation of confidential intelligence funds. She made a handwritten flowchart (Exh. "II") of the allocations/disbursements/liquidation and audit of the CIF, based on LOI 1282 and the COA Circulars. A digital presentation of this flowchart was made available.

The first step is the provision or allotment of a budget because no CIF fund can be disbursed without the allocation. This is provided

in the second whereas clause of Circular 92-385. For GOCCs, applying Circular 2003-002, there must be allocation or budget for the CIF and it should be specifically in the corporate operating budget or would be taken from savings authorized by special provisions.

This was not followed in the PCSO CIF disbursement in 2008. The disbursement for that year was ₱86,555,060. The CIF budget for that year was only ₱28 million, and there were no savings because they were on deficit. This was also not followed for the year 2009. The CIF disbursement for that year was ₱139,420,875. But the CIF budget was only ₱60 million, and there was also no savings, as they were in deficit. For the year 2010, the total disbursement, as of June 2010, was ₱141,021,980. The budget was only ₱60 million.

The requirements in the disbursement of the CIF are the budget and the approval of the President. If the budget is correct, the President will approve the disbursement or release of the CIF. In this case, the President approved the release of the fund without a budget and savings. Also, the President approved the same in violation of LOI 1282, because there were no detailed specific project proposals and specifications accompanying the request for additional CIF. The requests for the year 2008, 2009 and 2010 were uniform and just enumerated the purposes, not projects. They did not contain what was required in the LOI.

The purpose of this requirement is stated in the LOI itself. The request for allocations must contain full details and specific purposes for which the fund will be used. A detailed presentation is made to avoid duplication of expenditures, as what had happened in the past, because of a lack of centralized planning and organization or intelligence fund.

There was no reason for each additional intelligence fund that was approved by then President Arroyo.

The third step is the designation of the disbursing officer. In this case, the Board of Directors designated Uriarte as Special Disbursing Officer (SDO) for the portion of the CIF that she withdrew. For the portion withdrawn by Valencia, there was no special disbursing officer designated on record.

The designation of Uriarte was in violation of internal control which is the responsibility of the department head, as required by Section 3 of Circular 2003-002. When she went through copies of the checks and disbursement vouchers submitted to her, she found

out that Uriarte was both the SDO and the authorized officer to sign the vouchers and checks. She was also the payee of the checks. All the checks withdrawn by Uriarte were paid to her and she was also the signatory of the checks.

Aside from Uriarte, Valencia also disbursed funds in the CIF. For the funds withdrawn by Valencia, he was also the authorized officer to sign the vouchers and checks. He was also the payee of the checks.

The confidential funds were withdrawn through cash advance. She identified the vouchers and checks pertaining to the disbursements made by Uriarte and Valencia in 2008, 2009 and 2010.

The checks of Uriarte and Valencia had the treasurer as co-signatory. The treasurer who signed depends on when the checks were issued.

She knows the signatures of Uriarte, Valencia and Aguas because they have their signatures on the records.

Uriarte and Valencia signed the vouchers to certify to the necessity and legality of the vouchers; they also signed to approve the same, signify they are "okay" for payment and claim the amount certified and approved as payee. Gloria P. Araullo signed as releasing officer, giving the checks to the claimants.

Accused Aguas signed the vouchers to certify that there are adequate funds and budgetary allotment, that the expenditures were properly certified and supported by documents, and that the previous cash advances were liquidated and accounted for. This certification means that the cash advance voucher can be released. This is because the COA rule on cash advance is that before any subsequent cash advance is released, the previous cash advance must be liquidated first. This certification allowed the requesting party and payee to get the cash advance from the voucher. Without this certification, Uriarte and Valencia could not have been able to get the cash advance. Otherwise, it was a violation of P.D. 1445 (Government Auditing Code).

The third box in the flowchart is the designation of the SDO. Board Resolutions No. 217, Series of 2009 (Exh. "M"), No. 2356, Series of 2009 (Exh. "N"), and No. 029, Series of 2010 (Exh. "O"), resolved to designate Uriarte as SDO for the CIF. These resolutions were signed and approved by Valencia, Taruc, Valdes, Uriarte, Roquero and Morato. The witness is familiar with these persons' signature because their signatures appear on PCSO official records.

Valencia designated himself as SDO upon the recommendation of COA Auditor Plaras. There was no board resolution for this designation. There was just a certification dated February 2, 2009 (Exh. "Z[4]"). This certification was signed by Valencia himself and designates himself as the SDO since he is personally taking care of the funds which are to be handled with utmost confidentiality. The witness is familiar with Valencia's signature because it appears on PCSO official documents. Under COA rules, the Board of Directors has authority to designate the SDO. The chairman could not do this by himself.

Plaras wrote a letter dated December 15, 2008 to Valencia. It appears in the letter that to substantiate the liquidation report, Plaras told Valencia to designate himself as SDO because there was no disbursing officer. It was the suggestion of Plaras. Plaras is the head of the CIF Unit under then COA Chairman Villar. Liquidation vouchers and supporting papers were submitted to them, with corresponding fidelity bond.

COA Circulars 92-385 and 2003-002 indicate that to disburse CIF, one must be a special disbursing officer or SDO. All disbursing officers of the government must have fidelity bonds. The bond is to protect the government from and answer for misappropriation that the disbursing officer may do. The bond amount required is the same as the amount that may be disbursed by the officer. It is based on total accountability and not determined by the head of the agency as a matter of discretion. The head determines the accountability which will be the basis of the bond amount.

The Charter states that the head of the agency is the Board of Directors, headed by the Chairman. But now, under the Governance of Government Corporation law, it is the general manager.

Plaras should have disallowed or suspended the cash advances because there was no fidelity bond and the disbursing officer was not authorized. There was no bond put up for Valencia. The records show that the bond for Uriarte was only for the amount of ₱1.5 million. This is shown in a letter dated August 23, 2010, to COA Chairman Villar through Plaras from Aguas (Exh. "B[5]"), with an attachment from the Bureau of Treasury, dated March 2, 2009. It appears there that the bond for Uriarte for the CIF covering the period February 2009 to February 2010 was only ₱1.5 million.

Aguas submitted this fidelity bond certification, which was received on August 24, 2010, late, because under the COA Circulars, it should

have been submitted when the disbursing officer was designated. It should have been submitted to COA because a disbursing officer cannot get cash advances if they do not have a fidelity bond.

Once an SDO is designated, the specimen signature must be submitted to COA, together with the fidelity bond and the signatories for the cash advances.

The approval of the President pertains to the release of the budget, not its allocation. She thinks the action of the Board was done because there was no budget. The Board's confirmation was needed because it was in excess of the budget that was approved. They were trying to give a color of legality to them approval of the CIF in excess of the approved corporate operating budget. The Board approval was required for the amount to be released, which amount was approved in excess of the allotted budget for the year. The President cannot approve an additional amount, unless there is an appropriation or a provision saying a particular savings will be used for the CIF. The approvals here were all in excess of the approved budget.

Cash advances can be given on a per project basis for CIF. For one to get a cash advance, one must state what the project is as to that cash advance. No subsequent cash advance should be given, until previous cash advances have been liquidated and accounted for. If it is a continuing project, monthly liquidation reports must be given. The difference in liquidation process between CIF and regular cash advances is that for CIF, the liquidation goes to the Chair and not to the resident auditor of the agency or the GOCC. All of the liquidation papers should go to the COA Chair, given on a monthly basis.

In this case, the vouchers themselves are couched generally and just say cash advance from CIF of the Chairman or from the GM's office in accordance with her duties. There is no particular project indicated for the cash advance. Also, the requirement that prior advances be liquidated first for subsequent advances to be given was not followed. The witness prepared a summary of the cash advances withdrawn by the two disbursing officers covering the years 2008, 2009 and 2010 (Exh. "D$^5$"). The basis for this summary is the record submitted to them by Aguas, which were supposedly submitted to COA. It shows that there were subsequent cash advances, even if a prior advance has not yet been liquidated. Valencia submitted liquidation reports to Villar, which consists of a letter, certification and schedule of cash advances, and liquidation reports. One is dated

July 24, 2008 (Exh. "G[5]") and another is dated February 13, 2009 (Exh. "H[5]").

When she secured Exhibit "G[5]", together with the attached documents, she did not find any supporting documents despite the statement in Exhibit "G[5]" that the supporting details of the expenses that were incurred from the fund can be made available, if required. Aguas, the person who processed the cash advances said he did not have the details or supporting details of documents of the expenditures.

Normally, when liquidating CIF, the certification of the head of the agency is necessary. If there were vouchers or receipts involved, then all these should be attached to the liquidation report. There should also be an accomplishment report which should be done on a monthly basis. All of these should be enclosed in a sealed envelope and sent to the Chairman of the COA, although the agency concerned must retain a photocopy of the documents. The report should have a cover/transmittal letter itemizing the documents, as well as liquidation vouchers and other supporting papers. If the liquidation voucher and the supporting papers are in order, then the COA Chairman or his representative shall issue a credit memorandum. Supporting papers consist of receipts and sales invoices. The head of the agency would have to certify that those were all actually incurred and are legal. In this case, there were no supporting documents submitted with respect to Valencia's cash advances in 2008. Only the certifications by the SDO were submitted. These certifications stated that he has the documents in his custody and they can be made available, if and when necessary.

When she reviewed the CIF, she asked Aguas to produce the supporting documents which were indicated in Valencia's certification and Aguas's own certification in the cash advance vouchers, where he also certified that the documents supporting the cash advance were in their possession and that there was proper liquidation. Aguas replied that he did not have them.

She identified the letter of Uriarte to Villar dated July 24, 2008 as well as a transmittal letter by Uriarte for August 1, 2008, a certification and schedule of cash advances and an undetailed liquidation report. Among the attachments is Board Resolution 305, a copy of the COB for 2008, a document for the second half of 2008, a document dated April 2, 2009, and a document for liquidation of ₱2,295,000. She also identified another letter for ₱50 million, dated February 13, 2009, attached to the transmittal letter. There is a

certification attached to those two letters amounting to ₱2,295,000. Also attached is the schedule of cash advances by Aguas and a liquidation report where Aguas certified that the supporting documents are complete and proper although the supporting documents and papers are not attached to the liquidation report, only the general statement. These documents were submitted to them by Aguas.

She was shown the four liquidation reports (Exhibits "$M^5$", "$N^5$", "$O^5$" and "$P^5$") attached to the transmittal letter and was asked whether they were properly and legally accomplished. She replied that they were couched in general terms and the voucher for which the cash advance was liquidated is not indicated and only the voucher number is specified. She adds that the form of the liquidation is correct, but the details are not there and neither are the supporting papers.

The liquidation report was dated July 24, 2008, but it was submitted only on August 1, 2008 to COA, and it supposedly covered the cash advances of Uriarte from January to May 2008. This is stated in her summary of liquidation that was earlier marked. There were no supporting papers stated on or attached to the liquidation report.

She identified a set of documents to liquidate the cash advances from the CIF for the second semester of 2008 by Uriarte. The transmittal letter of Uriarte was received by the COA on April 2, 2009. Upon inquiry with Aguas, he said that he did not have any of the supporting papers that he supposedly had according to the certification. According to him, they are with Uriarte. Uriarte, on the other hand, said, during the Senate hearing, that she gave them to President Arroyo.

When Plaras wrote Valencia on December 15, 2008, Aguas wrote back on behalf of Valencia, who had designated himself as SDO. However, their designations, or in what capacity they signed the voucher are not stated. Among the attachments is also a memorandum dated April 2, 2008 (Exhibit "$P^5$"), containing the signature of Arroyo, indicating her approval to the utilization of funds. Another memorandum, dated August 13, 2008, indicating the approval of Arroyo was also attached to the transmittal letter of Aguas on April 4, 2009. These two memoranda bear the reasons for the cash advances, couched in general terms. The reasons were donated medicines that were sold and authorized expenditures on endowment fund. The reasons stated in the memoranda are practically the same. Uriarte did not submit any accomplishment reports regarding the intelligence fund. Aguas submitted an accomplishment report, but the accomplishments were not indicated in definite fashion or with specificity.

The witness narrated, based on her Summary of Liquidation Reports in 2009, that the total cash advance made by Uriarte was ₱132,760,096. Arroyo approved ₱90 million for release. ₱10 million in January 2009 and April 27, 2009, and then ₱50 million in May 6, 2009. In July 2, 2009, ₱10 million or a total of ₱70 million. In October 2009, ₱20 million or a total of ₱90 million. The amount that was cash advanced by Valencia was ₱5,660,779. Therefore, the total cash advances by these two officials were ₱138,420,875, but all of these were never liquidated in 2009. Uriarte and Valencia only submitted a liquidation voucher and a report to COA on April 12, 2010. For the January 22, 2009 disbursements, the date of the liquidation voucher was June 30, 2009, but it was submitted to COA on April 12, 2010. Witness identified the transmittal letter for ₱28 million by Uriarte, dated October 19, 2009, which was received by the COA only on April 12, 2010, with an accompanying certification from Uriarte as to some of the documents from which the witness's Summary of Liquidation was based.

The cash advances made by Uriarte and Valencia violated par. 1, Sec. 4 and Sec. 84 of P.D. 1445 and par. 2, III, COA Circular No. 92-385.

Since these cash advances were in excess of the appropriation, in effect, they were disbursed without any appropriation. These cash advances were also made without any specific project, in violation of par. 2 of COA Circular No. 92-385. In this case, the cash advances were not for a specific project. The vouchers only indicate the source of the fund. The vouchers did not specify specific projects.

The total cash advances for the years 2008, 2009 and 2010 to accused Uriarte and Valencia is more than ₱366,000,000. Valencia cash advanced ₱13.3 million. The rest was made by Uriarte.

The memoranda to President Arroyo stated only the problems encountered by the PCSO. These problems, as stated in each memorandum, included donated medicines sometimes ending up in store for sale, unofficial use of ambulances, rise of expenditures of endowment fund, lotto sweepstakes scams, fixers for programs of the PCSO, and other fraudulent schemes. No projects were mentioned.

As regards the sixth step — the credit notice, the same was not validly issued by the COA. The credit notice is a settlement or an action made by the COA Auditors and is given once the Chairman, in the case of CIF Fund, finds that the liquidation report and all the

supporting papers are in order. In this case, the supporting papers and the liquidation report were not in order, hence, the credit notice should not have been issued. Further, the credit notice has to follow a specific form. The COA Chairman or his representative can: 1) settle the cash advance when everything is in order; 2) suspend the settlement if there are deficiencies and then ask for submission of the deficiencies; or 3) out rightly disallow it in case said cash advances are illegal, irregular or unconscionable, extravagant or excessive. Instead of following this form, the COA issued a document dated January 10, 2011, which stated that there is an irregular use of the price fund and the charity fund for CIF Fund. The document bears an annotation which says, "wait for transmittal, draft" among others. The document was not signed by Plaras, who was the Head of the Confidential and Intelligence Fund Unit under COA Chairman Villar. Instead, she instructed her staff to "please ask Aguas to submit the supplemental budget." This document was not delivered to PCSO General Manager J.M. Roxas. They instead received another letter dated January 13, 2011 which was almost identical to the first document, except it was signed by Plaras, and the finding of the irregular use of the prize fund and the charity fund was omitted. Instead, the work "various" was substituted and then the amount of ₱137,500,000. Therefore, instead of the earlier finding of irregularity, suddenly, the COA issued a credit notice as regards the total of ₱140,000,000. The credit notice also did not specify that the transaction had been audited, indicating that no audit was made.

A letter dated May 11, 2009 from the COA and signed by Plaras, states that the credit notice is hereby issued. Thus, it is equivalent to the credit notice, although it did not come in the required form. It merely stated that the credit notice is issued for ₱29,700,000, without specifying for which vouchers and for which project the credit notice was being given. It merely says "First Semester of 2008." In other words, it is a "global" credit notice that she issued and it did not state that she made an audit.

Another letter, dated July 14, 2010 and signed by Plaras, supposedly covers all the cash advances in 2009, but only up to the amount of ₱116,386,800. It also did not state that an audit was made.

There were no supporting papers attached to the voucher, and the certification issued is not in conformity with the required certification by COA Circular 2003-002. The certification dated July 24, 2008 by Valencia was not in conformity with the certification required by COA. The required form should specify the project for which the

certification was being issued, and file code of the specific project. The certification dated July 24, 2008, however, just specified that it was to certify that the ₱2 million from the 2008 CIF Fund was incurred by the undersigned, in the exercise of his functions as PCSO Chairman for the various projects, projects and activities related to the operation of the office, and there was no specific project or program or file code of the intelligence fund, as required by COA. Furthermore, the certification also did not contain the last paragraph as required by COA. Instead, the following was stated in the certification: "He further certifies that the details and supporting documents and papers on these highly confidential missions and assignments are in our custody and kept in our confidential file which can be made available if circumstances so demand." No details or supporting documents were reviewed by the witness, and though she personally asked Aguas, the latter said that he did not have the supporting papers, and they were not in the official files of the PCSO. Two people should have custody of the papers, namely, The Chairman of COA and the PCSO or its Special Disbursing Officer. The witness asked Aguas because Valencia was not there, and also because Aguas was the one who made the certification and was in-charge of accounting. The vouchers, supposedly certified by Aguas, as Budget and Accounting Department Manager, each time cash advances were issued, stated that the supporting documents are complete, so the witness went to him to procure the documents.

A certification dated February 13, 2009, stating that ₱2,857,000 was incurred by Valencia in the exercise of his function as PCSO Chairman, related to the operations of his office without the specific intelligence project. In the same document, there is a certification similar to one in the earlier voucher. No details of this certification were submitted by Aguas.

Another certification dated July 24, 2008 was presented, and it also did not specify the intelligence and confidential project, and it did not contain any certification that the amount was disbursed legally or that no benefits was given to any person. Similarly, the fourth paragraph of the same document states that Uriarte certified that details and supporting papers of the cash advance that she made of ₱27,700,000 are "kept in their confidential" (sic). The same were not in the PCSO official records.

The certification dated October 19, 2009 for the amount of ₱2,498,300, was submitted to the witness by Aguas. It also did not conform to the COA requirements, as it also did not specify the use

of the cash advance, did not contain any certification that the cash advance was incurred for legal purposes, or that no benefits to other people were paid out of it. Again, no supporting documents were found and none were given by Aguas. Similarly, a certification dated February 8, 2010 for the amount of ₱2,394,654 was presented, and it also does not conform with the COA circular, as it only stated that the amount was spent or incurred by Valencia for projects covering the period of July 1 to December 31, 2009 to exercise his function as PCSO Chairman, thus no particular intelligence fund or project was stated. As in the other certifications, though it was stated that the details were in the confidential file, it appeared that these were not in the possession of PCSO. Another certification dated October 19, 2009 submitted by Uriarte was examined by the witness in the course of her audit, and found that it also did not conform to the requirements, as it only stated that the ₱25 million and ₱10 million intelligence and confidential fund dated January 29, 2009 and April 27, 2009 were used in the exercise of her function as PCSO Vice Chairman and General Manager.

All the documents were furnished by Aguas during the course of the audit of the financial transactions of PCSO. Other documents given by Aguas include a letter by Valencia to COA Chairman Villar, which was attached to the letter dated July 24, 2008. For the Certification issued by Valencia for ₱2,857,000, there was also a certification attached dated February 13, 2009. As to Exhibit "$J^5$", together with the certification, there was a letter but no other documents were submitted. Similarly, as to Exhibit "$M^6$", it was attached to a letter dated October 19, 2009 and was submitted to the witness by Aguas. Exhibit "$N^6$" was attached to the letter of Valencia dated February 8, 2010, the October 19, 2009 certification was attached to the October 19, 2009 letter to Chairman Villar.

The certification dated June 29, 2010, signed by Valencia in the amount of ₱2,075,000, also does not conform with the COA requirement as it only specifies that the fund was disbursed by Valencia under his office for various programs in the exercise of his function as Chairman. Though there was a certification that the supporting papers were kept in the office, these papers were not found in the records of the PCSO and Aguas did not have any of the records. The certification was attached to the letter of Valencia to Villar dated June 29, 2010.

In the certification dated June 29, 2010 signed by Uriarte in the amount of ₱137,500,000, the witness also said that the certification

did not conform to the COA Circular because it only stated that the amount was disbursed from a special intelligence fund, authorized and approved by the President under the disposition of the Office of the Vice Chairman. Despite the statement certifying that there were documents for the audit, no documents were provided and the same were not in the official files of PCSO. The certification was attached to a letter by Uriarte dated July 1, 2010 addressed to Villar.

In the certification dated October 19, 2009 signed by Uriarte in the amount of ₱2,500,000, the witness made the same finding that it also did not conform to the COA Circular, as it did not specify the project for which the cash advance was obtained and there were also no records in the PCSO. It was attached to the letter dated October 19, 2009.

Finally, in the certification dated February 9, 2010 signed by Uriarte in the amount of ₱73,993,846, the witness likewise found that it did not conform with the requirements of the COA, as all it said was the amount was used for the exercise of the functions of the PCSO Chairman and General Manager. The documents related to this were also not in the PCSO records and Aguas did not submit the same. It was attached to a letter dated February 8, 2010 from Uriarte to Villar.

There are two kinds of audit on disbursements of government funds: pre-audit and post-audit. Both are defined in COA Circular 2009-002. Pre-audit is the examination of documents supporting the transaction, before these are paid for and recorded. The auditor determines whether: (1) the proposed expenditure was in compliance with the appropriate law, specific statutory authority or regulations; (2) sufficient funds are available to enable payment of the claim; (3) the proposed expenditure is not illegal, irregular, extravagant, unconscionable or unnecessary, and (4) the transaction is approved by the proper authority and duly supported by authentic underlying evidence. On the other hand, the post-audit requirement is the process where the COA or the auditor will have to do exactly what was done in the pre-audit, and in addition, the auditor must supplement what she did by tracing the transaction under audit to the books of accounts, and that the transaction is all recorded in the books of accounts. The auditor, in post-audit, also makes the final determination of whether the transaction was not illegal, irregular, extravagant, excessive, unconscionable or unnecessary.

In this case, no audit was conducted. In a letter dated May 11, 2009 signed by Plaras, it was stated that a credit advice was given.

However, the letter did not conform to the requirements or form of a credit notice. Such form was in COA Circular 2003-002, and should specify the liquidation report number, the amount, check numbers, and the action taken by the auditor. The auditor should also include a certification that these have been audited. In this instance, no certification that the transaction was audited was given by Plaras. Other similar letters did not conform with the COA Circular. All transactions of the government must be subject to audit in accordance with the provisions of the Constitution. Nevertheless, the requirements for audit are the same.

The effect of the issuance of the credit notice by the COA was that the agency will take it up in the books and credit the cash advance. This is the seventh step in the flowchart. Once there is a cash advance, the liability of the officers who obtained the cash advance would be recorded in the books. The credit notice, when received, would indicate that the account was settled. The agency will credit the receivable or the cash advance, and remove from the books as a liability of the person liable for the cash advance. The effect of this was that the financial liabilities of Uriarte and Valencia were removed from the books, but they could still be subject to criminal liability based on Sec. 10 of COA Circular 91-368 (Government Accounting and Auditing Manuals, Vol. 1, implementing P.D. 1445), which states: "The settlement of an account whether or not on appeal has been made within the statutory period is no bar to criminal prosecution against persons liable." From the 2008 COA Annual Audited Financial Statements of PCSO, it was seen that the procedure was not followed because the liability of the officers was already credited even before the credit notice was received. In the financial statements, it was stated that the amount due from officers and employees, which should include the cash advances obtained by Uriarte and Valencia, were not included because the amount stated therein was ₱35 million, while the total vouchers of Uriarte and Valencia was ₱86 million.

The witness also related that she traced the records of the CIF fund (since such was no longer stated as a receivable), and reviewed whether it was recorded as an expense in 2008. She found out that the recorded CIF fund expense, as recorded in the corporate operating budget as actually disbursed, was only ₱21,102,000. As such, she confronted her accountants and asked them "Saan tinago itong amount na to?" The personnel in the accounting office said that the balance of the ₱86 million or the additional ₱21 million was not recorded in the operating fund budget because they used the prize fund and charity

fund as instructed by Aguas. Journal Entry Voucher No. 8121443 dated December 31, 2008, signed by Elmer Camba, Aguas (Head of the Accounting Department), and Hutch Balleras (one of the staff in the Accounting Department), showed that this procedure was done.

The contents of the Journal Entry Voucher are as follows:

(a) Accounts and Explanation: Due to other funds. This means that the amount of ₱63,750,000 was credited as confidential expense from the operating fund. The amount was then removed from the operating fund, and it was passed on to other funds.

(b) PF Miscellaneous, Account No. 424-1-L ₱41,250,000 and CF Miscellaneous for 424-2-G for ₱22,500,000. PF Miscellaneous means Prize Fund Miscellaneous and CF stands for Charity Fund Miscellaneous. This means that funds used to release the cash advances to Uriarte and Valencia were from the prize fund and charity.

Attached to the Journal Entry Voucher was a document which reads "Allocation of Confidential and Intelligence Fund Expenses", and was the basis of Camba in doing the Journal Entry Voucher. In the same document, there was a written annotation dated 12-31-2008 which reads that the adjustment of CIF, CF and IF, beneficiary of the fund is CF and PF and signed by Aguas.

The year 2009 was a similar case, as the witness traced the recording of the credit notice at the end of 2009, and despite the absence of the credit notice, the Accounting Department removed from the books of PCSO the liability of Uriarte and Valencia, corresponding to the cash advances obtained in 2009. She based this finding on the COA Annual Audit Report on the PCSO for the year ended December 31, 2009. It was stated in the Audit Report that the total liability due from officers and employees was only ₱87,747,280 and it was less than the total cash advances of Uriarte and Valencia, which was ₱138 million. As a result, the witness checked the corresponding entry for the expenses in the corporate operating budget and found out that the same was understated. The CIF expenses were only ₱24,968,300, as against the actual amount per vouchers, which was ₱138,420,875. Upon checking with the Accounting Department, the department showed her another Journal Entry Voucher No. 9121157, dated December 29, 2009, where the personnel removed immediately the expense and recorded it as expense for the prize fund and charity fund by the end of December 31.

The contents of the Journal Entry Voucher, especially the notation "due from," means the accountability of those who had cash advance was instead credited. It was removed, and the amount was ₱106 million. The entry was confidential expense for ₱15,958,020 and then the due to other funds was ₱90,428,780. The explanation for "424" was found in the middle part, stating: "424-1-L" of miscellaneous prize fund was used in the amount of ₱58,502,740 and the charity fund was used in the amount of ₱31,916,040. The total amount of the receivables from Uriarte and Valencia that was removed was ₱106,386,800 and ₱90,428,780 respectively which came from the prize fund and charity fund.

The witness reported the discrepancy because there were violations of R.A. 1169, Sec. 6, which provides for the different funds of PCSO namely: prize fund (55% of the net receipts), charity fund (30% of the net receipts), and operating fund (15%). The proceeds of the lotto and sweepstakes ticket sales provide the money for these different funds, removing first the printing cost and the net proceeds (98%) is divided among the three funds mentioned. The prize fund is the fund set aside to be used to pay the prizes for the winnings in the lotto or sweepstakes draws, whether they are jackpot or consolation prizes. Incentives to the lotto operators or horse owners are also drawn from this fund, as all of the expenses connected to the winnings of the draw. On the other hand, the charity fund is reserved for charity programs approved by the board of PCSO, and constitutes hospital and medical assistance to individuals, or to help facilities and other charities of national character. Operating expenses are charged to the expenses to operate, personnel services, and MOOE. One kind of fund cannot be used for another kind, as they become a trust fund which should only be used for the purpose for which it was authorized, not even with the approval of the board.

The amounts obtained from the charity fund and prize fund for 2008 was ₱63,750,000, and in 2009 ₱90,428,780. The Board of Directors was given a copy of the COA Audit Reports for years 2008 and 2009. The Board of Directors for both years was composed of: Chairman Valencia, and Board Members Morato, Roquero, Taruc and Valdez. Uriarte was the Vice Chairman of the Board of Directors. The witness did not know whether the Board checked the COA reports, but there was no action on their part, and neither did they question the correctness of the statements. They also had the Audit Committee (which was composed of members of the board) at that time, and one of the duties of the Audit Committee was to verify the balances.

The witness identified the documents referring to the confirmation by the Board of Directors of PCSO of the CIF. Board Resolution No. 217, approved on February 18, 2009, confirms the CIF approved by the President. It did not state which CIF they were approving. They also assigned Uriarte as the Special Disbursing Officer of the CIF, but it did say for what year. The signatories to the same Board Resolution were Valencia, Taruc, Valdes, Uriarte, Roquero and Morato. The same were the witness's findings for Board Resolution No. 2356 S. 2009, approved on December 9, 2009. As for Board Resolution No. 29, S. 2010, approved on January 6, 2010, the Board confirmed the fund approved by the President for 2010, though the approval of the President was only received on August 13, 2010 as shown in the Memorandum dated January 4. In effect, the Board was aware of the requests, and because they ratified the cash advances, they agreed to the act of obtaining the same.

Apart from the President violating LOI 1282, the witness also observed that the President directly dealt with the PCSO, although the President, by Executive Order No. 383 dated November 14, 2004, and Executive Order No. 455 dated August 22, 2005, transferred the direct control and supervision of the PCSO to the Department of Social Welfare and Development (DSWD), and later to the Department of Health (DOH). A project should first be approved by the Supervising and Controlling Secretary of the Secretary of Health; that the President had transferred her direct control and supervision, and lost the same. The witness said her basis was administrative procedure. In this regard, President Aquino now has transferred the control and supervision of the PCSO back to the Office of the President through Executive Order No. 14, S. 2010, dated November 19, 2010.

Uriarte should not have gone directly to the President to ask for the latter's approval for allocation. Nonetheless, the release of the CIF must still be approved by the President.[9]

The State also presented evidence consisting in the testimonies of officers coming from different law enforcement agencies[10]

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[9] *Rollo*, Vol. I, pp. 463-477.

[10] The following law enforcers testified for the Prosecution, namely: (a) Capt. Ramil Roberto Enriquez, Assistant Chief of Staff for Intelligence of the Philippine Air Force; (b) Col. Teofilo Reyno Bailon, Jr., Assistant Chief of Staff, Air Staff for Intelligence of the Philippine Air Force; (c) Col.

to corroborate Tolentino's testimony to the effect that the PCSO had not requested from their respective offices any intelligence operations contrary to the liquidation report submitted by Uriarte and Aguas.

To complete the evidence for the Prosecution, Atty. Anamarie Villaluz Gonzales, Office-in-Charge and Department Manager of the Human Resources of PCSO; Flerida Africa Jimenez, Head of the Intelligence and Confidential Fund Audit Unit of the COA; and Noel Clemente, Director of COA were presented as additional witnesses.

After the Prosecution rested its case, GMA, Aguas, Valencia, Morato, Taruc V, Roquero and Villar separately filed their demurrers to evidence asserting that the Prosecution did not establish a case for plunder against them.

On April 6, 2015, the *Sandiganbayan* granted the demurrers to evidence of Morato, Roquero, Taruc and Villar, and dismissed the charge against them. It held that said accused who were members of the PCSO Board of Directors were not shown to have diverted any PCSO funds to themselves, or to have raided the public treasury by conveying and transferring into their possession and control any money or funds from PCSO account; that as to Villar, there had been no clear showing that his designation of Plaras had been tainted with any criminal design; and that the fact that Plaras had signed "by authority" of Villar as the COA Chairman could not criminally bind him in the absence of any showing of conspiracy.

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Ernest Marc Rosal, Chief Operations and Intelligence Division, Intelligence Service of the Armed Forces of the Philippines; (d) Lt. Col. Vince James de Guzman Bantilan, Chief of the Intelligence and Operations Branch, Office of the Assistant Chief of Staff for Intelligence of the AFP; (e) Col. Orlando Suarez, Chief Operations, Central Divisions, Office of the J12 of the AFP; (f) Ruel Lasala, Deputy Director for Intelligence Services of the NBI; (g) Atty. Reynaldo Ofialda Esmeralda, Deputy Director for Intelligence Services of the NBI; (h) NBI Agents Dave Segunial, Romy Bon Huy Lim, and Palmer Mallari; (i) Virgilio L. Mendez, Director of the NBI; and (j) Charles T. Calima, Jr., Director for Intelligence of the PNP.

However, the *Sandiganbayan* denied the demurrers of GMA, Aguas and Valencia, holding that there was sufficient evidence showing that they had conspired to commit plunder; and that the Prosecution had sufficiently established a case of malversation against Valencia, pertinently saying:

Demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. **The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. The court then ascertains whether there is a competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.**

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Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded to accord to circumstances. To be considered sufficient therefore, the evidence must prove (a) the commission of the crime, and (b) the precise degree of participation therein by the accused (*Gutib v. CA*, 110 SCAD 743, 312 SCRA 365 [1999]).

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**A. Demurrer filed by Arroyo and Aguas:**

It must be remembered that in Our November 5, 2013 Resolution, **We found strong evidence of guilt against Arroyo and Aguas, only as to the second predicate act charged in the Information**, which reads:

(b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and/or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures.

In the November 5, 2013 Resolution, We said:

It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept

of personal gain/benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a "raid on the public treasury" is consummated where all the acts necessary for its execution and accomplishment are present. Thus a "raid on the public treasury" can be said to have been achieved thru the pillaging or looting of public coffers either through misuse, misappropriation or conversion, **without need of establishing gain or profit to the raider. Otherwise stated, once a "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed. x x x**

x x x x x x x x x

Clearly, the improper acquisition and illegal use of CIF funds, which is obviously a government asset, will amount to a raid on the public treasury, and therefore fall into the category of ill-gotten wealth.

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x x x It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008-2010. **Uriarte was able [to] accumulate during that period CIF funds in the total amount of ₱352,681,646.** This was through a series of withdrawals as cash advances of the CIF funds from the PCSO coffers, as evidenced by the disbursement vouchers and checks issued and encashed by her, through her authorized representative.

These flagrant violations of the rules on the use of CIF funds evidently characterize the **series of withdrawals by and releases to Uriarte as "raids" on the PCSO coffers, which is part of the public treasury.** These were, in every sense, "pillage," as **Uriarte looted government funds and appears to have not been able to account for it.** The monies came into her possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus, amounting to "misuse" of the same. Therefore, the additional CIF funds are ill-gotten, as defined by R.A. 7080, the PCGG rules, and *Republic v. Sandiganbayan*. **The encashment of the checks, which named her as the "payee," gave Uriarte material possession of the CIF funds which she disposed of at will.**

> As to the determination whether the threshold amount of ₱50 million was met by the prosecution's evidence, the Court believes this to have been established. Even if the computation is limited only to the cash advances/releases made by accused Uriarte alone AFTER Arroyo had approved her requests and the PCSO Board approved CIF budget and the "regular" ₱5 million CIF budget accorded to the PCSO Chairman and Vice Chairman are NOT taken into account, still the total **cash advances through accused Uriarte's series of withdrawals will total ₱189,681,646.** This amount surpasses the ₱50 million threshold.
>
> The evidence shows that for the year 2010 alone, Uriarte asked for ₱150 million additional CIF funds, and Arroyo granted such request and authorized its use. From January 8, 2010 up to June 18, 2010, Uriarte made a series of eleven (11) cash advances in the total amount of ₱138,223,490. **According to Uriarte's testimony before the Senate**, the main purpose for these cash advances was for the "roll-out" of the small town lottery program. However, the accomplishment report submitted by Aguas shows that ₱137,500,000 was spent on non-related PCSO activities, such as "bomb threat, kidnapping, terrorism and bilateral and security relations." All the cash advances made by Uriarte in 2010 were made in violation of LOI 1282, and COA Circulars 2003-002 and 92-385. These were thus improper use of the additional CIF funds amounting to raids on the PCSO coffers and were ill-gotten because Uriarte had encashed the checks and came into possession of the monies, which she had complete freedom to dispose of, but was not able to properly account for.

These findings of the Court clearly point out the **commission by Uriarte of the crime of Plunder under the second predicate act charged in the Information. As to Arroyo's participation,** the Court stated in its November 5, 2013 Resolution that:

> The evidence shows that Arroyo approved not only Uriarte's request for additional CIF funds in 2008-2010, but also authorized the latter to use such funds. **Arroyo's "OK" notation and signature on Uriarte's letter-requests signified unqualified approval of Uriarte's request to use the additional CIF funds because the last paragraph of Uriarte's requests uniformly ended with this phrase: "With the use of intelligence fund, PCSO can protect its image and integrity of its operations.**

The letter-request of Uriarte in 2010 was more explicit because it categorically asked for: "The approval on the use of the fifty percent of the PR Fund as PCSO Intelligence Fund will greatly help PCSO in the disbursement of funds to immediately address urgent issues."

Arroyo cannot, therefore, successfully argue that what she approved were only the request for the grant or allocation of additional CIF funds, because **Arroyo's "OK" notation was unqualified and, therefore, covered also the request to use such funds, through releases of the same in favor of Uriarte.**[11]

The *Sandiganbayan* later also denied the respective Motions for Reconsideration of GMA and Aguas, observing that:

In this case, **to require proof that monies went to a plunderer's bank account or was used to acquire real or personal properties or used for any other purpose to personally benefit the plunderer, is absurd.** Suppose a plunderer had already illegally amassed, acquired or accumulated ₱50 Million or more of government funds and just decided to keep it in his vault and never used such funds for any purpose to benefit him, would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the person to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail.

Also, accused Arroyo insists that there was no proof of the fact of amassing the ill-gotten wealth, and that the "overt act" of approving the disbursement is not the "overt act" contemplated by law. She further stresses that there was no proof of conspiracy between accused Arroyo and her co-accused and that the Prosecution was unable to prove their case against accused Arroyo. **What accused Arroyo forgets is that although she did not actually commit any "overt act" of illegally amassing CIF funds, her act of approving not only the additional CIF funds but also their releases, aided and abetted accused Uriarte's successful raids on the public treasury.** Accused Arroyo is therefore rightly charged as a co-conspirator of Uriarte who accumulated the CIF funds. **Moreover,**

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[11] *Rollo*, pp. 159-161.

**the performance of an overt act is not indispensable when a conspirator is the mastermind.**[12]

Considering that the *Sandiganbayan* denied the demurrers to evidence of GMA and Aguas, they have come to the Court on *certiorari* to assail and set aside said denial, claiming that the denial was with grave abuse of discretion amounting to lack or excess of jurisdiction.

## Issues

GMA pleads that the denial of her demurrer to evidence was in patent and flagrant violation of Republic Act No. 7080, the law on plunder, and was consequently arbitrary and oppressive, not only in grave abuse of discretion but rendered without jurisdiction because:

### First Ground

**On the basis of the above Resolutions, the Sandiganbayan has denied petitioner Arroyo's Demurrer to Evidence and considering the reasons for doing so, would find petitioner Arroyo guilty of the offense of plunder under Republic Act No. 7080 as charged in the Information notwithstanding the following:**

a. **While the gravamen, indeed *corpus delicti* of the offense of plunder under R.A. No. 7080, and as charged in the Information, is that the public officer . . . "amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof, in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00)", the Sandiganbayan Resolutions extirpate this vital element of the offense of plunder;**

b. **In point of fact, not a single exhibit of the 637 exhibits offered by the prosecution nor a single testimony of the 21 witnesses of the prosecution was offered by the prosecution to prove that petitioner amassed, accumulated or acquired even a single peso of the alleged ill-gotten wealth amounting to ₱365,997,915.00 or any part of that amount alleged in the Information;**

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[12] *Rollo*, G.R. No. 220598, Vol. I, pp. 204-205.

**c. Implicitly confirming the above, and aggravating its error, on the basis solely of petitioner Arroyo's authorization of the release of the Confidential/Intelligence Fund from PCSO's accounts, the Sandiganbayan ruled that she has committed the offense of plunder under R.A. No. 7080 for the reason that her release of CIF funds to the PCSO amount to a violation of Sec. 1(d) [1] of R.A. No. 7080 which reads, as follows:**

**1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;**

**which, "did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury", thereby disregarding the gravamen or the *corpus delicti* of the offense of plunder under R.A. No. 7080.**

**Second Ground**

**Worsening the above error of the Sandiganbayan, the Resolutions, with absolutely no justification in law or in the evidence, purportedly as the "mastermind" of a conspiracy, and without performing any overt act, would impute to petitioner Arroyo the "series of withdrawals as cash advances of the CIF funds from the PCSO coffers" by Uriarte as "raids on the PCSO coffers, which is part of the public treasury" and "in every sense, 'pillage' as Uriarte looted government funds and appears to have not been able to account for it". Parenthetically, Uriarte has not been arrested, was not arraigned and did not participate in the trial of the case.**

**Third Ground**

**That as an obvious consequence of the above, denial of petitioner Arroyo's Demurrer To Evidence for the reasons stated in the Sandiganbayan Resolutions, amounting no less to convicting her on the basis of a disjointed reading of the crime of plunder as defined in R.A. No. 7080, aggravated by the extirpation in the process of its "*corpus delicti*" — the amassing, accumulation or acquisition of ill-gotten wealth, hence, of a crime that does not exist in law and consequently a blatant deprivation of liberty without due process of law.**

**Fourth Ground**

**The Information alleges that the ten (10) persons accused in Crim. Case No. SB-12-CRM-0174, namely: Gloria Macapagal-Arroyo, Rosario C. Uriarte, Sergio O. Valencia, Manuel L. Morato, Jose R. Taruc V, Raymundo T. Roquero, [M]a. Fatima A.S. Valdes, Benigno B. Aguas, Reynaldo A. Villar and Nilda B. Plaras" . . . all public officers committing the offense in relation to their respective offices and taking undue advantage of their respective official positions, authority, relationships, connections or influence, conniving, conspiring and confederating with one another, did then and there willfully, unlawfully and criminally amass, accumulate and/or acquire, directly or indirectly, ill-gotten wealth in the aggregate amount or total value of THREE HUNDRED SIXTY FIVE MILLION NINE HUNDRED NINETY SEVEN THOUSAND NINE HUNDRED FIFTEEN PESOS (PHP365,997,915.00), more or less, through any or a combination or a series of overt or criminal acts, or similar schemes or means, described as follows . . ." or each of them, ₱36,599,791.50 which would not qualify the offense charged as "plunder" under R.A. No. 7080 against all ten (10) accused together, for which reason the Information does not charge the offense of plunder and, as a consequence, all proceedings thereafter held under the Information are void.**[13]

On his part, Aguas contends that:

**A. In light of the factual setting described above and the evidence offered and admitted, does proof beyond reasonable doubt exist to warrant a holding that Prosecution proved the guilt of the accused such that there is legal reason to deny Petitioner's Demurrer?**

**B. Did the Prosecution's offered evidence squarely and properly support the allegations in the Information?**

**PETITIONER STRONGLY SUBMITS THAT PROSECUTION FAILED TO ESTABLISH BY PROOF BEYOND REASONABLE DOUBT THE EXISTENCE OF THE CORE ELEMENTS OF THE CRIME OF PLUNDER.**[14]

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[13] *Rollo*, G.R. No. 220598, Vol. I, pp. 51-54.

[14] *Rollo*, G.R. No. 220953, Vol. I, p. 15.

On the other hand, the Prosecution insists that the petitions for *certiorari* should be dismissed upon the following grounds, namely:

**A. CERTIORARI IS NOT THE PROPER REMEDY FROM AN ORDER OR RESOLUTION DENYING DEMURRER TO EVIDENCE.**

**B. THERE IS NO GRAVE ABUSE OF DISCRETION BECAUSE THE SANDIGANBAYAN MERELY INTERPRETED WHAT CONSTITUTES PLUNDER UNDER LAW AND JURISPRUDENCE IN LIGHT OF FACTS OF THE CASE. IT DID NOT JUDICIALLY LEGISLATE A "NEW" OFFENSE.**

**1. ACTUAL PERSONAL GAIN, BENEFIT OR ENRICHMENT IS NOT AN ELEMENT OF PLUNDER UNDER R.A. NO. 7080.**

**2. EVIDENCE SHOWS THAT ARROYO, BY INDISPENSABLE COOPERATION, CONSPIRED WITH HER CO-ACCUSED AND PARTICIPATED IN THE COMPLEX, ILLEGAL SCHEME WHICH DEFRAUDED PCSO IN HUNDREDS OF MILLIONS OF PESOS, WHICH CONSTITUTES PLUNDER.**

**3. ARROYO IS NOT SIMILARLY SITUATED WITH ACCUSED PCSO BOARD MEMBERS AND CANNOT THUS DEMAND THAT THE SANDIGANBAYAN DISMISS THE PLUNDER CASE AGAINST HER.**

**C. ARROYO'S BELATED, COLLATERAL ATTACK ON THE INFORMATION CHARGING HER AND CO-ACCUSED FOR PLUNDER IS HIGHLY IMPROPER, ESPECIALLY AT THIS LATE STAGE OF THE PROCEEDING.**

**1. THE FACTS CONSTITUTING THE OFFENSE ARE CLEARLY ALLEGED IN THE INFORMATION.**

**2. ARROYO'S ACTIVE PARTICIPATION IN THE PROCEEDINGS ARISING FROM OR RELATING TO SB-12-CRM-0174 PROVES THAT SHE HAS ALWAYS KNOWN AND UNDERSTOOD THE NATURE AND SCOPE OF THE ACCUSATIONS AGAINST HER.**

**D. ARROYO IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER BECAUSE THE CRIMINAL PROSECUTION IN SB-12-CRM-0174 CANNOT BE ENJOINED.**[15]

Based on the submissions of the parties, the Court synthesizes the decisive issues to be considered and resolved, as follows:

**Procedural Issue:**

1. Whether or not the special civil action for *certiorari* is proper to assail the denial of the demurrers to evidence.

**Substantive Issues:**

1. Whether or not the State sufficiently established the existence of conspiracy among GMA, Aguas, and Uriarte;
2. Whether or not the State sufficiently established all the elements of the crime of plunder:
   a. Was there evidence of amassing, accumulating or acquiring ill-gotten wealth in the total amount of not less than ₱50,000,000.00?
   b. Was the predicate act of raiding the public treasury alleged in the information proved by the Prosecution?

**Ruling of the Court**

The consolidated petitions for *certiorari* are meritorious.

**I.**
**The Court cannot be deprived of its jurisdiction to correct grave abuse of discretion**

The Prosecution insists that the petition for *certiorari* of GMA was improper to challenge the denial of her demurrer to evidence; that she also thereby failed to show that there was grave abuse of discretion on the part of the *Sandiganbayan* in denying her demurrer to evidence; and that, on the contrary, the

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[15] *Rollo*, G.R. No. 220598, Vol. II, pp. 1016-1017.

*Sandiganbayan* only interpreted what constituted plunder under the law and jurisprudence in light of the established facts, and did not legislate a new offense, by extensively discussing how she had connived with her co-accused to commit plunder.[16]

The Court holds that it should take cognizance of the petitions for *certiorari* because the *Sandiganbayan*, as shall shortly be demonstrated, gravely abused its discretion amounting to lack or excess of jurisdiction.

The special civil action for *certiorari* is generally not proper to assail such an interlocutory order issued by the trial court because of the availability of another remedy in the ordinary course of law.[17] Moreover, Section 23, Rule 119 of the *Rules of Court* expressly provides that "the order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by *certiorari* before judgment." It is not an insuperable obstacle to this action, however, that the denial of the demurrers to evidence of the petitioners was an interlocutory order that did not terminate the proceedings, and the proper recourse of the demurring accused was to go to trial, and that in case of their conviction they may then appeal the conviction, and assign the denial as among the errors to be reviewed.[18] Indeed, it is doctrinal that the situations in which the writ of *certiorari* may issue should not be limited,[19] because to do so —

> x x x would be to destroy its comprehensiveness and usefulness. So wide is the discretion of the court that authority is not wanting to show that *certiorari* is more discretionary than either prohibition or *mandamus*. **In the exercise of our superintending control over other courts, we are to be guided by all the circumstances of each particular case 'as the ends of justice may require.' So it is**

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[16] *Rollo*, Vol. I, p. 1628.

[17] *Tadeo v. People*, G.R. No. 129774, December 29, 1998, 300 SCRA 744.

[18] *Alarilla v. Sandiganbayan*, G.R. No. 136806, August 22, 2000, 338 SCRA 485, 495.

[19] *Ong v. People*, G.R. No. 140904, October 9, 2000, 342 SCRA 372, 387.

**that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice**.[20]

The Constitution itself has imposed upon the Court and the other courts of justice the duty to correct errors of jurisdiction as a result of capricious, arbitrary, whimsical and despotic exercise of discretion by expressly incorporating in Section 1 of Article VIII the following provision:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

The exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to the contrary or for the sake of the convenience of one side. This is because the Court has the bounden constitutional duty to strike down grave abuse of discretion *whenever* and *wherever* it is committed. Thus, notwithstanding the interlocutory character and effect of the denial of the demurrers to evidence, the petitioners as the accused could avail themselves of the remedy of *certiorari* when the denial was tainted with grave abuse of discretion.[21] As we shall soon show, the *Sandiganbayan* as the trial court was guilty of grave abuse of discretion when it capriciously denied the demurrers to evidence despite the absence of competent and sufficient evidence to sustain the indictment for plunder, and despite the absence of the factual bases to expect a guilty verdict.[22]

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[20] *Id.*

[21] *Cruz v. People*, G.R. No. 121422, February 23, 1999, 303 SCRA 533.

[22] *Gutib v. Court of Appeals*, G.R. No. 131209, August 13, 1999, 312 SCRA 365, 377.

## II.
## The Prosecution did not properly allege and prove the existence of conspiracy among GMA, Aguas and Uriarte

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.[23] In this jurisdiction, conspiracy is either a crime in itself or a mere means to commit a crime.

As a rule, conspiracy is not a crime unless the law considers it a crime, and prescribes a penalty for it.[24] The exception is exemplified in Article 115 (*conspiracy and proposal to commit treason*), Article 136 *(conspiracy and proposal to commit coup d'etat, rebellion or insurrection)* and Article 141 *(conspiracy to commit sedition)* of the *Revised Penal Code*. When conspiracy is a means to commit a crime, it is indispensable that the agreement to commit the crime among all the conspirators, or their community of criminal design must be alleged and competently shown.

We also stress that the community of design to commit an offense must be a conscious one.[25] Conspiracy transcends mere companionship, and mere presence at the scene of the crime does not in itself amount to conspiracy. Even knowledge of, or acquiescence in, or agreement to cooperate is not enough to constitute one a party to a conspiracy, absent any active participation in the commission of the crime with a view to the furtherance of the common design and purpose.[26] Hence, conspiracy must be established, not by conjecture, but by positive and conclusive evidence.

In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual

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[23] Article 8, *Revised Penal Code*.

[24] *Estrada v. Sandiganbayan*, G.R. No. 148965, February 26, 2002, 377 SCRA 538, 557.

[25] *Bahilidad v. People*, G.R. No. 185195, March 17, 2010, 615 SCRA 597, 606.

[26] *Id.* at 686.

agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment.[27] Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[28]

But to be considered a part of the conspiracy, each of the accused must be shown to have performed at least an overt act in pursuance or in furtherance of the conspiracy, for without being shown to do so none of them will be liable as a co-conspirator, and each may only be held responsible for the results of his own acts. In this connection, the character of the *overt act* has been explained in *People v. Lizada*:[29]

> An overt or external act is defined as some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense. **The *raison d'etre* for the law requiring a direct overt act is that, in a majority of cases, the conduct of the accused consisting merely of acts of preparation has never ceased to be equivocal; and this is necessarily so, irrespective of his declared intent. It is that quality of being**

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[27] *People v. De Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 194-195.

[28] *People v. Del Castillo*, G.R. No. 169084, January 18, 2012, 663 SCRA 226, 246.

[29] G.R. Nos. 143468-71, January 24, 2003, 396 SCRA 62, 94-95.

**equivocal that must be lacking before the act becomes one which may be said to be a commencement of the commission of the crime, or an overt act or before any fragment of the crime itself has been committed, and this is so for the reason that so long as the equivocal quality remains, no one can say with certainty what the intent of the accused is.** It is necessary that the overt act should have been the ultimate step towards the consummation of the design. It is sufficient if it was the "first or some subsequent step in a direct movement towards the commission of the offense after the preparations are made." **The act done need not constitute the last proximate one for completion. It is necessary, however, that the attempt must have a causal relation to the intended crime. In the words of Viada, the overt acts must have an immediate and necessary relation to the offense.** (Bold underscoring supplied for emphasis)

In her case, GMA points out that all that the State showed was her having affixed her unqualified "OK" on the requests for the additional CIFs by Uriarte. She argues that such act was not even an overt act of plunder because it had no immediate and necessary relation to plunder by virtue of her approval not being *per se* illegal or irregular. However, the *Sandiganbayan*, in denying the Motions for Reconsideration of GMA and Aguas *vis-à-vis* the denial of the demurrers, observed that:

x x x accused Arroyo insists that there was no proof of the fact of amassing the ill-gotten wealth, and that the "overt act" of approving the disbursement is not the "overt act" contemplated by law. She further stresses that there was no proof of conspiracy between accused Arroyo and her co-accused and that the Prosecution was unable to prove their case against accused Arroyo. What accused Arroyo forgets is that although she did not actually commit any "overt act" of illegally amassing CIF funds, her act of approving not only the additional CIF funds but also their releases, aided and abetted accused Uriarte's successful raids on the public treasury. Accused Arroyo is therefore rightly charged as a co-conspirator of Uriarte who accumulated the CIF funds. Moreover, the performance of an overt act is not indispensable when a conspirator is the mastermind.[30]

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[30] *Supra* note 12.

It is in this regard that the *Sandiganbayan* gravely abused its discretion amounting to lack or excess of its jurisdiction. To start with, its conclusion that GMA had been the mastermind of plunder was plainly conjectural and outrightly unfounded considering that the information did not aver *at all* that she had been the mastermind; hence, the *Sandiganbayan* thereby acted capriciously and arbitrarily. In the second place, the treatment by the *Sandiganbayan* of her handwritten unqualified "OK" as an overt act of plunder was absolutely unwarranted considering that such act was a common legal and valid practice of signifying approval of a fund release by the President. Indeed, pursuant to *People v. Lizada, supra*, an act or conduct becomes an overt act of a crime only when it evinces a *causal relation* to the intended crime because the act or conduct will not be an overt act of the crime if it does not have an immediate and necessary relation to the offense.

In *Estrada v. Sandiganbayan*,[31] the Court recognized two nuances of appreciating conspiracy as a means to commit a crime, the *wheel conspiracy* and the *chain conspiracy*.

The wheel conspiracy occurs when there is a single person or group (the hub) dealing individually with two or more other persons or groups (the spokes). The spoke typically interacts with the hub rather than with another spoke. In the event that the spoke shares a common purpose to succeed, there is a single conspiracy. However, in the instances when each spoke is unconcerned with the success of the other spokes, there are multiple conspiracies.[32]

An illustration of wheel conspiracy wherein there is only one conspiracy involved was the conspiracy alleged in the information for plunder filed against former President Estrada and his co-conspirators. Former President Estrada was the hub while the spokes were all the other accused individuals. The

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[31] G.R. No. 148965, February 26, 2002, 377 SCRA 538, 556.

[32] *Contemporary Criminal Law, Concepts, Cases, and Controversies.* Third Ed., Lippman, M. R., Sage Publication, California, USA, 2013, p. 195.

rim that enclosed the spokes was the common goal in the overall conspiracy, *i.e.*, the amassing, accumulation and acquisition of ill-gotten wealth.

On the other hand, the American case of *Kotteakos v. United States*[33] illustrates a wheel conspiracy where multiple conspiracies were established instead of one single conspiracy. There, Simon Brown, the hub, assisted 31 independent individuals to obtain separate fraudulent loans from the US Government. Although all the defendants were engaged in the same type of illegal activity, there was no common purpose or overall plan among them, and they were not liable for involvement in a single conspiracy. Each loan was an end in itself, separate from all others, although all were alike in having similar illegal objects. Except for Brown, the common figure, no conspirator was interested in whether any loan except his own went through. Thus, the US Supreme Court concluded that there existed 32 separate conspiracies involving Brown rather than one common conspiracy.[34]

The chain conspiracy recognized in *Estrada v. Sandiganbayan* exists when there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer.[35] This involves individuals linked together in a vertical chain to achieve a criminal objective.[36] Illustrative of chain conspiracy was that involved in *United States v. Bruno,*[37] of the US Court of Appeals for the Second Circuit. There, 88 defendants were indicted for a conspiracy to import, sell, and possess narcotics. This case involved several smugglers who had brought narcotics to retailers who, in turn, had sold the narcotics to operatives in Texas and Louisiana for distribution to addicts. The US Court of Appeals

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[33] 328 U.S. 750 (1946).

[34] *Supra* note 32.

[35] *Supra* note 31.

[36] *Supra* note 32.

[37] 105 F.2d 921 (2d Cir. 1939).

for the Second Circuit ruled that what transpired was a single chain conspiracy in which the smugglers knew that the middlemen must sell to retailers for distribution to addicts, and the retailers knew that the middle men must purchase drugs from smugglers. As reasoned by the court, "the conspirators at one end of the chain knew that the unlawful business would not and could not, stop with their buyers; and those at the other end knew that it had not begun with their sellers." Each conspirator knew that "the success of that part with which he was immediately concerned was dependent upon success of the whole." This means, therefore, that "every member of the conspiracy was liable for every illegal transaction carried out by other members of the conspiracy in Texas and in Louisiana."[38]

Once the State proved the conspiracy as a means to commit a crime, each co-conspirator is as criminally liable as the others, for the act of one is the act of all. A co-conspirator does not have to participate in every detail of the execution; neither does he have to know the exact part performed by the co-conspirator in the execution of the criminal act.[39] Otherwise, the criminal liability of each accused is individual and independent.

The Prosecution insisted that a conspiracy existed among GMA, Uriarte, Valencia and the Members of the PCSO Board of Directors, Aguas, Villar and Plaras. The *Sandiganbayan* agreed with the Prosecution as to the conspirators involved, declaring that GMA, Aguas, and Uriarte had conspired and committed plunder.

A review of the records of the case compels us to reject the *Sandiganbayan*'s declaration in light of the information filed against the petitioners, and the foregoing exposition on the nature, forms and extent of conspiracy. On the contrary, the Prosecution did not sufficiently allege the existence of a conspiracy among GMA, Aguas and Uriarte.

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[38] *Supra* note 32.

[39] *People v. Del Castillo*, G.R. No. 169084, January 18, 2012, 663 SCRA 226, 247

A perusal of the information suggests that what the Prosecution sought to show was an implied conspiracy to commit plunder among all of the accused on the basis of their collective actions prior to, during and after the implied agreement. It is notable that the Prosecution did not allege that the conspiracy among all of the accused was by express agreement, or was a wheel conspiracy or a chain conspiracy.

This was another fatal flaw of the Prosecution.

In its present version, under which the petitioners were charged, Section 2 of Republic Act No. 7080 (Plunder Law) states:

> Section 2. *Definition of the Crime of Plunder; Penalties*. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. [As Amended by Section 12, Republic Act No. 7659 (The Death Penalty Law)]

Section 1(d) of Republic Act No. 7080 provides:

> Section 1. *Definition of terms*. — As used in this Act, the term:
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> x x x x x x x x x
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> d. "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Section 1(d) hereof. Surely, the law requires in the criminal charge for plunder against several individuals that there must be a main plunderer and her co-conspirators, who may be members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons. In other words, the allegation of the wheel conspiracy or express conspiracy

in the information was appropriate because the main plunderer would then be identified in either manner. Of course, implied conspiracy could also identify the main plunderer, but that fact must be properly alleged and duly proven by the Prosecution.

This interpretation is supported by *Estrada v. Sandiganbayan*,[40] where the Court explained the nature of the conspiracy charge and the necessity for the main plunderer for whose benefit the amassment, accumulation and acquisition was made, thus:

> There is no denying the fact that the "plunder of an entire nation resulting in material damage to the national economy" is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality — to help the former President amass, accumulate or acquire ill-gotten wealth. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. **The gravamen of the conspiracy charge, therefore,** is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused ordered the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it **is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or <u>for</u> former President Estrada.** [bold underscoring supplied for emphasis]

Here, considering that 10 persons have been accused of amassing, accumulating and/or acquiring ill-gotten wealth aggregating ₱365,997,915.00, it would be improbable that the crime charged was plunder if none of them was alleged to be the main plunderer. As such, each of the 10 accused would account for the aliquot amount of only ₱36,599,791.50, or exactly 1/10 of the alleged aggregate ill-gotten wealth, which is far below the threshold value of ill-gotten wealth required for plunder.

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[40] *Supra* note 31, at 555-556.

We are not unmindful of the holding in *Estrada v. Sandiganbayan*[41] to the effect that an information alleging conspiracy is sufficient if the information alleges conspiracy either: (1) with the use of the word *conspire*, or its derivatives or synonyms, such as *confederate, connive, collude, etc.*; or (2) by allegations of the basic facts constituting the conspiracy in a manner that a person of common understanding would know what is being conveyed, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts. We are not talking about the sufficiency of the information as to the allegation of conspiracy, however, but rather the identification of the main plunderer sought to be prosecuted under R.A. No. 7080 as an element of the crime of plunder. Such identification of the main plunderer was not only necessary because the law required such identification, but also because it was essential in safeguarding the rights of all of the accused to be properly informed of the charges they were being made answerable for. The main purpose of requiring the various elements of the crime charged to be set out in the information is to enable all the accused to suitably prepare their defense because they are presumed to have no independent knowledge of the facts that constituted the offense charged.[42]

For sure, even the *Sandiganbayan* was at a loss in this respect. Despite the silence of the information on who the main plunderer or the mastermind was, the *Sandiganbayan* readily condemned GMA in its resolution dated September 10, 2015 as the mastermind despite the absence of the specific allegation in the information to that effect. Even worse, there was no evidence that substantiated such sweeping generalization.

In fine, the Prosecution's failure to properly allege the main plunderer should be fatal to the cause of the State against the petitioners for violating the rights of each accused to be informed of the charges against each of them.

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[41] *Id.* at 565.

[42] *Andaya v. People*, G.R. No. 168486, June 27, 2006, 493 SCRA 539, 558.

Nevertheless, the Prosecution insists that GMA, Uriarte and Aguas committed acts showing the existence of an implied conspiracy among themselves, thereby making all of them the main plunderers. On this score, the Prosecution points out that the sole overt act of GMA to become a part of the conspiracy was her approval *via* the marginal note of "OK" of all the requests made by Uriarte for the use of additional intelligence fund. The Prosecution stresses that by approving Uriarte's requests in that manner, GMA violated the following:

a. Letter of Instruction 1282, which required requests for additional confidential and intelligence funds (CIFs) to be accompanied with detailed, specific project proposals and specifications; and

b. COA Circular No. 92-385, which allowed the President to approve the release of additional CIFs only if there was an existing budget to cover the request.

The insistence of the Prosecution is unwarranted. GMA's approval of Uriarte's requests for additional CIFs did not make her part of *any* design to raid the public treasury as the means to amass, accumulate and acquire ill-gotten wealth. Absent the specific allegation in the information to that effect, and competent proof thereon, GMA's approval of Uriarte's requests, even if unqualified, could not make her part of any criminal conspiracy to commit plunder or any other crime considering that her approval was not *by any means* irregular or illegal.

The Prosecution takes GMA to task for approving Uriarte's request despite the requests failing to provide "the full detail [of] the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished." It posits that the requests were not specific enough, contrary to what is required by LOI 1282.

LOI 1282 reads:

LETTER OF INSTRUCTION NO. 1282

To: All Ministries and Offices Concerned

In recent years intelligence funds appropriated for the various ministries and certain offices have been, as reports reaching me indicate, spent with less than full regard for secrecy and prudence. On the one hand, there have been far too many leakages of information on expenditures of said funds; and on the other hand, where secrecy has been observed, the President himself was often left unaware of how these funds had been utilized.

Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.

The requests and the detailed explanations shall be submitted to the President personally.

It is imperative that such detailed presentations be made to the President in order to avoid such duplication of expenditures as has taken place in the past because of the lack of centralized planning and organized disposition of intelligence funds.

Full compliance herewith is desired.

Manila, January 12, 1983.

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

However, an examination of Uriarte's several requests indicates their compliance with LOI No. 1282. The requests, similarly worded, furnished: (a) the full details of the specific purposes for which the funds would be spent; (b) the explanations of the circumstances giving rise to the necessity of the expenditure; and (c) the particular aims to be accomplished.

The specific purposes and circumstances for the necessity of the expenditures were laid down as follows:

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO — Not for* Sale";

2. Unwarranted or unofficial use of ambulances by beneficiary-donees;
3. Unauthorized expenditures of endowment fund for charity patients and organizations;
4. Lotto and sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;
5. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
6. Other fraudulent schemes and activities which put the PCSO in bad light.[43]

A reading of the requests also reveals that the additional CIFs requested were to be used to protect PCSO's image and the integrity of its operations. The Court thus cannot share the Prosecution's dismissiveness of the requests for not being compliant with LOI No. 1282. According to its terms, LOI No. 1282 did not detail any qualification as to how specific the requests should be made. Hence, we should not make any other pronouncement than to rule that Uriarte's requests were compliant with LOI No. 1282.

COA Circular No. 92-385 required that additional request for CIFs would be approved only when there was available budget. In this regard, the Prosecution suggests that there was no longer any budget when GMA approved Uriarte's requests because the budget had earmarked intelligence funds that had already been *maxed out and used*. The suggestion is not acceptable, however, considering that the funds of the PCSO were co-mingled into one account as early as 2007. Consequently, although only 15% of PCSO's revenues was appropriated to an operation fund from which the CIF could be sourced, the remaining 85% of PCSO's revenues, already co-mingled with the operating fund, could still sustain the additional requests. In short, there was available budget from which to draw the additional requests for CIFs.

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[43] *Rollo*, Vol. II, p. 990.

It is notable that the COA, although frowning upon PCSO's co-mingling of funds, did not rule such co-mingling as illegal. As such, sourcing the requested additional CIFs from one account was far from illegal.

Lastly, the Prosecution's effort to show irregularities as badges of bad faith has led it to claim that GMA had known that Uriarte would raid the public treasury, and would misuse the amounts disbursed. This knowledge was imputed to GMA by virtue of her power of control over PCSO.

The Prosecution seems to be relying on the doctrine of command responsibility to impute the actions of subordinate officers to GMA as the superior officer. The reliance is misplaced, for incriminating GMA under those terms was legally unacceptable and incomprehensible. The application of the doctrine of command responsibility is limited, and cannot be true for all litigations. The Court ruled in *Rodriguez v. Macapagal-Arroyo*[44] that command responsibility pertains to the responsibility of commanders for crimes committed by subordinate members of the armed forces or other persons subject to their control in international wars or domestic conflict. The doctrine has also found application in civil actions for human rights abuses. But this case involves neither a probe of GMA's actions as the Commander-in-Chief of the Armed Forces of the Philippines, nor of a human rights issue. As such, it is legally improper to impute the actions of Uriarte to GMA in the absence of any conspiracy between them.

On the part of Aguas, the *Sandiganbayan* pronounced him to be as much a member of the implied conspiracy as GMA was, and detailed his participation in this manner:

> In all of the disbursement vouchers covering the cash advances/ releases to Uriarte of the CIF funds, Aguas certified that:
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> CERTIFIED: Adequate available funds/budgetary allotment in the amount of ₱__________; expenditure properly certified; supported by documents marked (X) per checklist and back

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[44] G.R. No. 191805, November 15, 2011, 660 SCRA 84.

hereof; account codes proper; previous cash advance liquidated/ accounted for.

These certifications, after close scrutiny, were not true because: 1.) there were no documents which lent support to the cash advances on a per project basis. The particulars of payment simply read: "To draw cash advance form the CIF Fund of the Office of the Vice-Chairman and General Manager". No particular purpose or project was specified contrary to the requirement under COA Circular 2003-002 that cash advances must be on a per project basis. Without specifics on the project covered by each cash advance. Aguas could not certify that supporting documents existed simply because he would not know what project was being funded by the cash advances; and 2.) There were no previous liquidations made of prior cash advances when Aguas made the certifications. COA circular 2003-002 required that cash advances be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. If the completion of the projects mentioned were for more than one month, a monthly progress liquidation report was necessary. In the case of Uriarte's cash advances certified to by Aguas, the liquidation made was wholesale, i.e., these were done on a semi-annual basis without a monthly liquidation or at least a monthly liquidation progress report. How then could Aguas correctly certify that previous liquidations were accounted for? Aguas's certification also violated Sec. 89 of P.D. 1445 which states:

> Limitations on cash advance. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

There is a great presumption of guilt against Aguas, as his action aided and abetted Uriarte's being able to draw these irregular CIF funds in contravention of the rules on CIF funds. Without Aguas's certification, the disbursement vouchers could not have been processed for payment. Accordingly, the certification that there were supporting documents and prior liquidation paved the way for Uriarte to acquire ill-gotten wealth by raiding the public coffers of the PCSO.

By just taking cognizance of the series and number of cash advances and the staggering amounts involved, Aguas should have been alerted

that something was greatly amiss and that Uriarte was up to something. If Aguas was not into the scheme, it would have been easy for him to refuse to sign the certification, but he did not. The conspiracy "gravamen" is therefore present in the case of Aguas. Moreover, Aguas's attempt to cover-up Uriarte's misuse of these CIF funds in his accomplishment report only contributed to unmasking the actual activities for which these funds were utilized. Aguas's accomplishment report, which was conformed to by Uriarte, made it self-evidence that the bulk of the CIF funds in 2009 and 2010 were allegedly spend for non-PCSO related activities, e.g., bomb threats, kidnapping, terrorism, and others.[45]

Thus, the *Sandiganbayan* concluded that Aguas became a part of the implied conspiracy when he signed the disbursement vouchers despite the absence of certain legal requirements, and issued certain certifications to the effect that the budgetary allotment/funds for cash advance to be withdrawn were available; that the expenditures were supported by documents; and that the previous cash advances had been liquidated or accounted for.

We opine and declare, however, that Aguas' certifications and signatures on the disbursement vouchers were insufficient bases to conclude that he was into any conspiracy to commit plunder or any other crime. Without GMA's participation, he could not release any money because there was then no budget available for the additional CIFs. Whatever irregularities he might have committed did not amount to plunder, or to any implied conspiracy to commit plunder.

Under the circumstances, the *Sandiganbayan*'s finding on the existence of the conspiracy to commit plunder was unsustainable. It then becomes unavoidable for the Court to rule that because the Prosecution failed to properly allege the elements of the crime, as well as to prove that any implied conspiracy to commit plunder or any other crime existed among GMA, Aguas and Uriarte there was no conspiracy to commit plunder among them. As a result, GMA and Aguas could be criminally responsible only for their own respective actions, if any.

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[45] *Rollo*, Vol. I, pp. 205-206.

**III.**
**No proof of amassing, or accumulating, or acquiring ill-gotten wealth of at least ₱50 Million was adduced against GMA and Aguas**

The *Sandiganbayan* sustained the sufficiency of the evidence to convict the petitioners for plunder on the basis that the Prosecution established all the elements of plunder.

After a review of the records, we find and rule that the Prosecution had no case for plunder against the petitioners.

To successfully mount a criminal prosecution for plunder, the State must allege and establish the following elements, namely:

1. That the offender is a public officer who acts by herself or in connivance with members of her family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

2. That the offender amasses, accumulates or acquires ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or

implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[46]

The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than ₱50,000,000.00. The failure to establish the *corpus delicti* should lead to the dismissal of the criminal prosecution.

As regards the element that the public officer must have amassed, accumulated or acquired ill-gotten wealth worth at least ₱50,000,000.00, the Prosecution adduced no evidence showing that either GMA or Aguas or even Uriarte, for that matter, had amassed, accumulated or acquired ill-gotten wealth of any amount. There was also no evidence, testimonial or otherwise, presented by the Prosecution showing even the remotest possibility that the CIFs of the PCSO had been diverted to either GMA or Aguas, or Uriarte.

The absolute lack of evidence on this material but defining and decisive aspect of the criminal prosecution was explicitly noted in the concurring and partial dissenting opinion of Justice Rodolfo A. Ponferrada of the *Sandiganbayan*, to wit:

> Here the evidence of the prosecution failed to show the existence of the crime of plunder as no evidence was presented that any of the accused, accumulated and/or acquired ill-gotten wealth. In fact, the principal witness of the prosecution when asked, said that she does not know the existence or whereabouts of the alleged ill-gotten wealth, to wit:

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[46] *Estrada v. Sandiganbayan*, G.R. No. 148560, November 19, 2001, 369 SCRA 394, 432.

Q: Of course, you don't know where is this ill-gotten wealth are (sic) now?

A: Yes, Your Honors. **We don't know whether they saved it, squandered it or what? We don't know, Your Honor.** [47] [bold emphasis supplied]

After Atty. Tolentino, as the Prosecution's main witness, conceded lack of any knowledge of the amassing, accumulating or acquiring of ill-gotten wealth of at least ₱50,000,000.00, nothing more remained of the criminal prosecution for plunder. Hence, the *Sandiganbayan* should have granted the demurrers of GMA and Aguas, and dismissed the criminal action against them.

### IV.
### The Prosecution failed to prove the predicate act of raiding the public treasury

The *Sandiganbayan* observed that the Prosecution established the predicate act of raiding the public treasury, to wit:

Secondly, the terms "unjust enrichment," "benefit," and "pecuniary benefit" are only mentioned in the predicate acts mentioned in par. 2, 5 and 6 of Section 1 (d) of the Plunder Law. Paragraph 1 of the same section where "raids on the public treasury" is mentioned did not mention "unjust enrichment" or "personal benefit". Lastly, the predicate act covering "raids on the public treasury" is lumped up with the phrases misappropriation, conversion, misuse and malversation of public funds. Thus, once public funds, as in the case of CIF funds, are illegally accumulated, amassed or acquired. To the tune of ₱50 Million or more, there will be no need to establish any motive to gain, or much more establish where the money eventually ended up. As stated in Our Resolution dated November 5, 2013:

It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a

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[47] *Rollo*, Vol. I, pp. 188-189.

"raid on the public treasury" is consummated where all the acts necessary for its execution and accomplishment are present. Thus a "raid on the public treasury" can be said to have been achieved thru the pillaging or looting of public coffers either through misuse, misappropriation or conversion, without need of establishing gain or profit to the "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed.

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Clearly, the improper acquisition and illegal use of CIF funds, which is obviously a government asset, will amount to a raid on the public treasury, and therefore fall into the category of ill-gotten wealth.

x x x x x x x x x

x x x It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008-2010. Uriarte was able to accumulate during that period CIF funds in the total amount of ₱352,681,646. This was through a series of withdrawals as cash advances of the CIF funds from the PCSO coffers, as evidenced by the disbursement vouchers and checks issued and encashed by her, through her authorized representatives.

These flagrant violations of the rules on the use of CIF funds evidently characterize the series of withdrawals by and releases to Uriarte as "raids" on the PCSO coffers, which is part of the public treasury. These were, in every sense, "pillage," as Uriarte looted government funds and appears to have not been able to account for it. The monies came into her possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus amounting to "misuse" of the same. x x x

In this case, to require proof that monies went to a plunderer's bank account or was used to acquire real or personal properties or used for any other purpose to personally benefit the plunderer, is absurd. Suppose a plunderer had already amassed, acquired or accumulated ₱50 Million or more of government funds and just decide to keep it in his vault and never used such funds for any purpose to benefit him, would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the purpose to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge

could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail.[48]

The *Sandiganbayan* contended that in order to prove the predicate act of *raids of the public treasury*, the Prosecution need not establish that the public officer had benefited from such act; and that what was necessary was proving that the public officer had raided the public coffers. In support of this, it referred to the records of the deliberations of Congress to buttress its observation.

We do not share the *Sandiganbayan*'s contention.

The phrase *raids on the public treasury* is found in Section 1(d) of R.A. No. 7080, which provides:

Section 1. *Definition of Terms.* — x x x

x x x x x x x x x

d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

x x x x x x x x x

To discern the proper import of the phrase *raids on the public treasury*, the key is to look at the accompanying words: *misappropriation, conversion, misuse* or *malversation of public funds*. This process is conformable with the maxim of statutory construction *noscitur a sociis*, by which the correct construction of a particular word or phrase that is ambiguous in itself or is equally susceptible of various meanings may be made by considering the company of the words in which the word or phrase is found or with which it is associated. Verily, a word or phrase in a statute is always used in association with other

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[48] *Rollo*, Vol. I, pp. 203-204.

words or phrases, and its meaning may, therefore, be modified or restricted by the latter.[49]

To *convert* connotes the act of using or disposing of another's property as if it were one's own; *to misappropriate* means to own, to take something for one's own benefit;[50] *misuse* means "a good, substance, privilege, or right used improperly, unforeseeably, or not as intended;"[51] and *malversation* occurs when "any public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially."[52] The common thread that binds all the four terms together is that the public officer *used* the property taken. Considering that *raids on the public treasury* is in the company of the four other terms that require the use of the property taken, the phrase *raids on the public treasury* similarly requires such use of the property taken. Accordingly, the *Sandiganbayan* gravely erred in contending that the mere accumulation and gathering constituted the forbidden act of *raids on the public treasury*. Pursuant to the maxim of *noscitur a sociis, raids on the public treasury* requires the raider to use the property taken impliedly for his personal benefit.

The Prosecution asserts that the Senate deliberations removed *personal benefit* as a requirement for plunder. In not requiring personal benefit, the *Sandiganbayan* quoted the following exchanges between Senator Enrile and Senator Tañada, *viz.*:

Senator Enrile. The word here, Mr. President, "such public officer or person who conspired **or knowingly benefited." One does not have to conspire or rescheme**. The only element needed is that he "knowingly benefited." A candidate for the Senate for instance, who

[49] *Chavez v. Judicial and Bar Council*, G.R. No. 202242, July 17, 2012, 676 SCRA 579, 598-599.

[50] *Sy v. People*, G.R. No. 85785, April 24, 1989, 172 SCRA 685, 694.

[51] The Law Dictionary. Retrieved at http://thelawdictionary.org/misuse/ last June 6, 2016.

[52] Article 217, *Revised Penal Code*.

received a political contribution from a plunderer, knowing that the contributor is a plunderer and therefore, he knowingly benefited from the plunder, would he also suffer the penalty, Mr. President, for life imprisonment?

Senator Tañada. In the committee amendments, Mr. President, we have deleted these lines 1 to 4 and part of line 5, on page 3. But, in a way, Mr. President, it is good that the Gentleman is bringing out these questions, I believe that under the examples he has given, the Court will have to. . .

Senator Enrile. How about the wife, Mr. President, he may not agree with the plunderer to plunder the country but because she is a dutiful wife or a faithful husband, she has to keep her or his vow of fidelity to the spouse. And, of course, she enjoys the benefits out of the plunder. Would the Gentleman now impute to her or him the crime of plunder simply because she or he knowingly benefited out of the fruits of the plunder and, therefore, he must suffer or he must suffer the penalty of life imprisonment?

The President. That was stricken out already in the Committee amendment.

Senator Tañada. Yes, Mr. President. Lines 1 to 4 and part of line 5 were stricken out in the Committee amendment. But, as I said, the examples of the Minority Floor Leader are still worth spreading the *Record*. And, I believe that in those examples, the Court will have just to take into consideration all the other circumstances prevailing in the case and the evidence that will be submitted.

The President. In any event, 'knowingly benefited' has already been stricken off."[53]

The exchanges between Senator Enrile and Senator Tañada reveal, therefore, that what was removed from the coverage of the bill and the final version that eventually became the law was a person who was not the main plunderer or a co-conspirator, but one who personally benefited from the plunderers' action. The requirement of personal benefit on the part of the main plunderer or his co-conspirators by virtue of their plunder was not removed.

As a result, not only did the Prosecution fail to show where the money went but, more importantly, that GMA and Aguas

[53] Record of the Senate, June 6, 1989, p. 1403, Vol. IV, No. 141.

had personally benefited from the same. Hence, the Prosecution did not prove the predicate act of *raids on the public treasury* beyond reasonable doubt.

**V.**
**Summation**

In view of the foregoing, the Court inevitably concludes that the *Sandiganbayan* completely ignored the failure of the information to sufficiently charge conspiracy to commit plunder against the petitioners; and ignored the lack of evidence establishing the *corpus delicti* of amassing, accumulation and acquisition of ill-gotten wealth in the total amount of at least ₱50,000,000.00 through any or all of the predicate crimes. The *Sandiganbayan* thereby acted capriciously, thus gravely abusing its discretion amounting to lack or excess of jurisdiction.

*Grave abuse of discretion* means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction.[54] To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[55]

**WHEREFORE,** the Court **GRANTS** the petitions for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions issued in Criminal Case No. SB-12-CRM-0174 by the *Sandiganbayan* on April 6, 2015 and September 10, 2015; **GRANTS** the petitioners' respective demurrers to evidence; **DISMISSES** Criminal Case No. SB-12-CRM-0174 as to the petitioners **GLORIA MACAPAGAL-ARROYO** and **BENIGNO AGUAS**

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[54] *Feliciano v. Villasin,* G.R. No. 174929, June 27, 2008, 556 SCRA 348; *Uy v. Office of the Ombudsman*, G.R. Nos. 156399-400, June 27, 2008, 556 SCRA 73.

[55] *Vergara v. Ombudsman*, G.R. No. 174567, March 12, 2009, 580 SCRA 693; *Nationwide Security and Allied Services, Inc. v. Court of Appeals*, G.R. No. 155844, 14 July 2008, 558 SCRA 148.

for insufficiency of evidence; **ORDERS** the immediate release from detention of said petitioners; and **MAKES** no pronouncements on costs of suit.

**SO ORDERED.**

*Velasco, Jr., Leonardo-de Castro, Brion, Peralta, del Castillo, Perez, Mendoza, Reyes,* and *Jardeleza, JJ.,* concur.

*Perlas-Bernabe, J.,* see separate concurring and dissenting opinion.

*Sereno, C.J.,* joins the dissent of *J.* Leonen and see separate dissenting opinion.

*Carpio* and *Caguioa, JJ.,* join the dissenting opinion of *J. Leonen.*

*Leonen, J.,* dissents, see separate opinion.

## SEPARATE CONCURRING AND DISSENTING OPINION

**PERLAS-BERNABE, *J.*:**

The primordial issue in this case is whether or not respondent the Sandiganbayan gravely abused its discretion in denying the demurrers to evidence of petitioners Gloria Macapagal-Arroyo (Arroyo) and Benigno B. Aguas (Aguas).

The instant petitions stemmed from an Information[1] charging Arroyo and Aguas (petitioners), along several others, of the crime of Plunder, defined by and penalized under Section 2 of Republic Act No. (RA) 7080[2] or the "Plunder Law," as amended by RA 7659,[3] filed before the Sandiganbayan and docketed as

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[1] The Information is reproduced in the *ponencia*, pp. 2-3.

[2] Entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER," approved on July 12, 1991.

[3] Entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

Criminal Case No. SB-12-CRM-0174. The charge revolved around a series of anomalous transactions with respect to the release of the Confidential and Intelligence Fund (CIF) of the Philippine Charity Sweepstakes Office (PCSO), through which petitioners and other co-accused, all public officers, allegedly conspired to amass, accumulate, or acquire ill-gotten wealth in the aggregate amount of ₱365,997,915.00.[4] After the Sandiganbayan acquired jurisdiction over the persons of petitioners, the latter filed their respective petitions for bail which were, however, denied on the ground that the evidence of guilt against them was strong.[5] Thereafter, trial on the merits ensued.

After the prosecution concluded its presentation of evidence, various co-accused, including petitioners, filed, with leave of court, their respective demurrers to evidence, asserting that there was no sufficient evidence to establish a case of Plunder against them.[6]

In a Resolution[7] dated April 6, 2015, the Sandiganbayan denied the demurrers to evidence of petitioners. With respect to Arroyo's demurrer, the Sandiganbayan held that: *(a)* her repeated "OK" notations in PCSO General Manager Rosario C. Uriarte's (Uriarte) multiple letter-requests[8] did not only signify her unqualified approval to Uriarte's requests for additional CIF funds, but also amounted to an authorization of the use thereof; *(b)* despite the absence of full details on the specific purposes for which the additional CIF funds were to be spent for, Arroyo never questioned Uriarte's requests and still approved them in

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[4] See *ponencia*, p. 3.

[5] *Id.* at 3-4.

[6] *Id.* at 19. See also Sandiganbayan Resolution dated April 6, 2015, pp. 3-28.

[7] See *rollo* (G.R. No. 220598), Vol. I, pp. 139-194. Penned by Associate Justice Rafael R. Lagos with Associate Justices Efren N. De La Cruz and Napoleon E. Inoturan. Associate Justices Rodolfo A. Ponferrada and Alex L. Quiroz submitted their respective concurring and dissenting opinion.

[8] See Omnibus Opposition (to the Demurrer to Evidence by accused Arroyo, Valencia, Morato, Roquero, Taruc V, Aguas, and Villar) filed by the Official of the Special Prosecutor dated September 14, 2014, pp. 73-78, attached as Annex "R" of Arroyo's Petition in G.R. No. 220598.

violation of Letter of Instructions No. 1282,[9] series of 1983 (LOI 1282) and Commission on Audit (COA) Circular Nos. 92-385[10] and 2003-002;[11] and *(c)* such acts resulted in Uriarte illegally amassing, acquiring, or accumulating CIF funds amounting to more than ₱50 Million. As for Aguas's demurrer, the Sandiganbayan ratiocinated that it was through his certifications in the disbursement vouchers — which all turned out to be false — that Uriarte was able to amass, acquire, or accumulate ill-gotten wealth amounting to more than ₱50 Million. In view of the foregoing, the Sandiganbayan concluded that petitioners' respective participations as co-conspirators of Uriarte in the plunder of public funds were established by sufficient evidence.[12]

Aggrieved, petitioners separately moved for reconsideration,[13] but were, however, denied in a Resolution[14] dated September 10, 2015; hence, the instant petitions for *certiorari*.

At the outset, the *ponencia* found no procedural infirmity in the *certiorari* petitions filed by petitioners against the Sandiganbayan Resolutions denying their respective demurrers, emphasizing that the said orders are interlocutory in nature and, hence, subject to the Court's *certiorari* jurisdiction. In this relation, it added that the Court has "the duty to strike down grave abuse of discretion whenever and wherever it is committed."[15]

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[9] Dated January 12, 1983.

[10] Subject: Restatement with Amendments of COA Issuances on the Audit of Intelligence and/or Confidential Funds dated October 1, 1992.

[11] Subject: Audit and Liquidation of Intelligence and Confidential Funds for National and Corporate Sectors dated July 30, 2003.

[12] See discussions in the April 6, 2015 Sandiganbayan Resolution, pp. 30-36.

[13] The respective motions for reconsideration of petitioners were both dated April 22, 2015. See *rollo* (G.R. No. 220598), Vol. I, p. 195.

[14] *Id.* at 195-211.

[15] *Ponencia*, p. 28.

On the merits, the *ponencia* proposed to grant petitioners' demurrers to evidence, dismiss Criminal Case No. SB-12-CRM-0174 as against them, and order their release from detention.[16] In so ruling, the *ponencia* held that the Sandiganbayan gravely abused its discretion in denying said demurrers, considering that the prosecution failed to: *(a)* properly allege and prove the existence of conspiracy among Arroyo, Aguas, and Uriarte;[17] *(b)* prove that the co-accused amassed, acquired, or accumulated ill-gotten wealth in the amount of at least ₱50 Million;[18] and *(c)* prove the existence of the predicate act of raiding the public treasury.[19]

On the insufficiency of the charge, the *ponencia* observed that the "identification of the main plunderer was not only necessary because the law required such identification[,] but also because it was essential in safeguarding the rights of the accused to be properly informed of the charges they were being made answerable for."[20] Thus, it concluded that "the [p]rosecution's failure to properly allege the main plunderer should be fatal to the cause of the State against the [petitioners]."[21]

Further, the *ponencia* held that the prosecution failed to prove any overt acts from petitioners that would establish their respective participations in the conspiracy to commit Plunder, reasoning that: *(a)* Arroyo's mere unqualified approval of Uriarte's requests for additional CIF funds — which was not by any means irregular or illegal — did not make her part of the design to raid the public treasury and thereby amass, acquire, or accumulate ill-gotten wealth;[22] and *(b)* Aguas's certifications and signatures on the disbursement vouchers were insufficient

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[16] *Id.* at 47.

[17] *Id.* at 28.

[18] *Id.* at 41.

[19] *Id.* at 43.

[20] *Id.* at 35.

[21] *Id.* at 36.

[22] *Id.*

bases to conclude that he was involved in any conspiracy to commit Plunder as those would not have meant anything had Arroyo not authorized the release of additional CIF funds.[23]

Finally, anent the predicate act of raiding the public treasury, the *ponencia* theorized that a "raid on the public treasury" under Section 1 (d) (1)[24] of the Plunder Law "requires the raider to use property taken impliedly for his personal benefit"[25] in line with the principle of *noscitur a sociis*, or "the doctrine of associated words," which postulates that "where a particular word or phrase in a statement is ambiguous in itself or is equally susceptible of various meanings, its true meaning may be made clear and specific by considering the company in which it is found or with which it is associated."[26] In this regard, it was pointed out that the term "raid on the public treasury" was accompanied by the words "misappropriation," "conversion," and "misuse or malversation" of public funds, all of which — according to the *ponencia* — are concepts which require the use of the property taken.[27] Thus, in view of the prosecution's failure to prove that personal benefit was derived by any of the co-accused from the use of CIF funds, it ruled that the existence of the aforesaid predicate act was not proven.[28]

I partly agree with the *ponencia*'s findings.

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[23] *Id.* at 40.

[24] SECTION 1. Definition of Terms. — As used in this Act, the term —

x x x x x x x x x

d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury[.]

[25] *Ponencia*, p. 45.

[26] *Aisporna v. Court of Appeals*, 198 Phil. 838, 847 (1982).

[27] *Ponencia*, pp. 44-45.

[28] See *id.* at 46.

**I.**

I first address the matters of procedure.

A petition for *certiorari* is generally prohibited to assail an order denying a demurrer to evidence. Section 23, Rule 119 of the Revised Rules of Criminal Procedure states:

Section 23. *Demurrer to evidence*. — x x x.

x x x x x x x x x

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

However, case law has recognized certain exceptions to this rule. For instance, in *Nicolas v. Sandiganbayan*,[29] this Court had the occasion to explain:

On whether *certiorari* is the proper remedy in the consolidated petitions, the general rule prevailing is that it does not lie to review an order denying a demurrer to evidence, which is equivalent to a motion to dismiss, filed after the prosecution has presented its evidence and rested its case.

Such order, being merely interlocutory, is not appealable; **neither can it be the subject of a petition for *certiorari*. The rule admits of exceptions, however**. Action on a demurrer or on a motion to dismiss rests on the sound exercise of judicial discretion. In *Tadeo v. People* [(360 Phil. 914, 919 [1998]), this Court declared that ***certiorari* may be availed of when the denial of a demurrer to evidence is tainted with "grave abuse of discretion or excess of jurisdiction, or oppressive exercise of judicial authority**." And so it did declare in *Choa v. Choa* [(441 Phil. 175, 182-183 [2002]) **where the denial is patently erroneous**.

Indeed, resort to *certiorari* is expressly recognized and allowed under Rules 41 and 65 of the Rules of Court, *viz.*:

Rule 41:

SEC. 1. Subject of appeal. — x x x

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[29] 568 Phil. 297 (2008).

No appeal may be taken from:

x x x x x x x x x

(c)An interlocutory order;

x x x x x x x x x

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

Rule 65:

SEC. 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, nor 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.[30] (Emphases and underscoring supplied)

As case law shows, despite the prohibition foisted in Section 23, Rule 119 of the Revised Rules of Criminal Procedure, the Court may take cognizance of the petitions for *certiorari* against orders denying demurrers to evidence if only to correct an "oppressive exercise of judicial authority" which is manifested by patent errors in the assailed ruling amounting to grave abuse of discretion.

Meanwhile, on a separate procedural matter, it is my view that the Information against petitioners, including their co-accused, sufficiently apprised them of the nature and cause of the accusation against them. In order for the accused to be sufficiently apprised of the charge of Plunder, it is essential that the ultimate facts constitutive of the crime's elements be stated in the Information with reasonable particularity. Plunder, as defined in RA 7080, as amended by RA 7659, has the following

[30] *Id.* at 309-310.

elements: **first**, that the offender is a **public officer**; **second**, that he **amasses, accumulates or acquires ill-gotten wealth** through a **combination or series**[31] **of overt or criminal acts** described in Section 1 (d); and **third**, that the aggregate amount or total **value of the ill-gotten wealth is at least ₱50,000,000.00**.[32]

The Information in this case clearly alleged the imputed crime of Plunder against all the accused, as well as the fact that they had conspired to commit the same. On its face, the Information states that: (1) petitioners are all public officers; (2) they conspired with each other and the other accused to willfully, unlawfully and criminally amass, accumulate and/or acquire ill-gotten wealth in the amount of at least ₱50 Million (*i.e.*, ₱365,997,915.00); and (3) they did so through any or a combination or a series of overt or criminal acts, or similar schemes and means, described as follows: "*(a)* diverting in several instances, funds from the operating budget of [the] PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restrictions, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit"; *(b)* "raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence

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[31] In *Estrada v. Sandiganbayan* [421 Phil. 290, 351 (2001)], it was explained:

> *Combination* — the result or product of combining; the act or process of combining. To *combine* is to bring into such close relationship as to obscure individual characters.
>
> *Series* — a number of things or events of the same class coming one after another in spatial and temporal succession.
>
> That Congress intended the words "combination" and "series" to be understood in their popular meanings is pristinely evident from the legislative deliberations on the bill which eventually became RA 7080 or the Plunder Law[.]

[32] See Section 12 of RA 7659, amending Section 2 of RA 7080.

Fund from PCSO's accounts, and/or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures"; and *(c)* "taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines."[33]

At this juncture, let me express that it is of no moment that the main plunderer was not identified on the face of the Information. Contrary to the *ponencia*'s stand,[34] the identification of a main plunderer is not a constitutive element of the crime of Plunder. In fact, the charge in this case is hinged on an allegation of conspiracy, which connotes that all had participated in the criminal design. Under the Revised Rules of Criminal Procedure, to be considered as valid and sufficient, an Information must state the name of the accused; the designation of the offense given by the statute; **the acts or omissions complained of as constituting the offense**; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.[35] All that should appear in the Information are the ultimate facts reflecting the elements of the crime charged, and not the evidentiary facts from which the conclusion of who was the main plunderer or who actually amassed, acquired, or accumulated the subject ill-gotten wealth may be drawn. Verily, the degree of particularity required for an Information to be sufficient is only based on the gauge of reasonable certainty — that is, whether the accused is informed in intelligible terms of the offense charged, as in this case.

That being said, I shall now proceed to a discussion on the substantive merits of the case.

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[33] See portions of the Information as reproduced in the *ponencia*, pp. 2-3.

[34] See *id.* at 34-36.

[35] *People v. Cinco*, 622 Phil. 858, 866-867 (2009), citing Section 6, Rule 110 of the Revised Rules of Criminal Procedure.

**II.**

In concept, a demurrer to evidence is "an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. **The party demurring challenges the sufficiency of the whole evidence to sustain a verdict**. The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt. x x x **Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances**. To be considered sufficient therefore, the evidence must prove: (*a*) the commission of the crime, and (*b*) the precise degree of participation therein by the accused. Thus, when the accused files a demurrer, the court must evaluate whether the prosecution evidence is sufficient enough to warrant the conviction of the accused beyond reasonable doubt."[36]

After a careful study of this case, it is my view that the Sandiganbayan gravely abused its discretion in denying Arroyo's demurrer to evidence on account of lack of sufficient evidence to prove her complicity in the alleged Plunder of CIF funds.

To recall, the Sandiganbayan found that there was sufficient evidence to prove Arroyo's participation as a co-conspirator in the Plunder of CIF funds because of her unqualified "OK" notations in Uriarte's multiple letter-requests for additional CIF funds. From its point of view, these notations violated LOI 1282 and COA Circular Nos. 92-385 and 2003-002. Accordingly, the Sandiganbayan denied her demurrer to evidence.

I disagree with the Sandiganbayan's findings.

**For a conspiracy charge to prosper, it is important to show that the accused had prior knowledge of the criminal**

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[36] *People v. Go*, G.R. No. 191015, August 6, 2014, 732 SCRA 216, 237-238; citations omitted.

**design; otherwise, it would hardly be the case that his alleged participation would be in furtherance of such design**. In theory, conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it. To prove conspiracy, the prosecution must establish the following requisites: (1) two or more persons came to an agreement; (2) the agreement concerned the commission of a crime; and (3) the execution of the felony was decided upon.[37] "***Prior agreement or assent is usually inferred from the acts of the accused showing concerted action, common design and objective, actual cooperation, and concurrence of sentiments or community of interests***."[38]

In this case, I am hard-pressed to find that Arroyo's periodic approvals of Uriarte's multiple letter-requests for additional CIF funds — which was the sole justification behind the Sandiganbayan ruling under present scrutiny — amount to sufficient evidence which would prove her complicity in the Plunder of CIF funds. While she may have approved the use of CIF funds which would be the determinative act for which Uriarte was able to amass, acquire, or accumulate the questioned funds, the prosecution failed to satisfactorily establish any overt act on Arroyo's part that would clearly show that she knew that the funds she had approved for release was intended to further the alleged criminal design. In other words, while Arroyo's approval was an indispensable act in ultimately realizing the objective of the scheme or pattern of criminal acts alleged in the Plunder Information, there is no sufficient evidence — whether direct or circumstantial — to prove that she had knowledge of such objective, and hence, could have given her assent thereto. Without knowledge, there can be no agreement, which is precisely the essence of conspiracy.

The Sandiganbayan pointed to Arroyo's supposed breach of LOI 1282, from which one would supposedly infer her knowledge and eventual assent to the alleged Plunder scheme. For context, LOI 1281 was issued by then President Ferdinand E. Marcos

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[37] See *People v. Fabros*, 429 Phil. 701, 713-714 (2002).

[38] *Id.* at 714; emphasis and italics supplied.

on January 12, 1983, reflecting the government's policy on intelligence funds at that time. In reference to the duty of the President, LOI 1282 requires that all requests for the allocation and release of intelligence funds shall: **(*a*) indicate the specific purposes for which the funds will be spent; (*b*) provide detailed explanations as to the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished by the release of funds; and (*c*) be presented personally to the President for his perusal and examination.**

The pertinent portions of LOI 1282 are highlighted below:

LETTER OF INSTRUCTIONS NO. 1282

To: All Ministries and Offices Concerned

In recent years[,] intelligence funds appropriated for the various ministries and certain offices have been, as reports reaching me indicate, spent with less than full regard for secrecy and prudence. On the one hand, there have been far too many leakages of information on expenditures of said funds; and on the other hand, where secrecy has been observed, the President himself was often left unaware of how these funds had been utilized.

**Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.**

**The requests and the detailed explanations shall be submitted to the President personally**.

It is imperative that such detailed presentations be made to the President in order to avoid such duplication of expenditures as has taken place in the past because of the lack of centralized planning and organized disposition of intelligence funds.

Full compliance herewith is desired.[39] (Emphases and underscoring supplied)

From this, it may be deduced that the President's approval of a request for intelligence funds which lacks any detailed

[39] See portions of LOI 1282 as reproduced in the *ponencia*, pp. 36-37.

explanation on the intended purpose or specifics thereof would be tantamount to an overt act that would support the finding that he/she facilitated the conspiratorial design.

In this case, records reveal that Uriarte indeed personally delivered to Arroyo the letter-requests for CIF funds in the aggregate amount of ₱295 Million, and that the latter provided her "OK" notations in each of those letter-requests.[40] In the April 2, 2008 letter-request, Uriarte provided the following purposes of additional CIF funds amounting to ₱25 Million:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Donated medicines sometimes end up in drug stores for sale even if they were labelled "Donated by PCSO-Not for Sale";
> 2. Unwarranted or unofficial use of ambulances by beneficiary-donees;
> 3. Unauthorized expenditures of endowment fund for charity patients and organizations;
> 4. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as willing (*sic*) tickets;
> 5. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
> 6. Other fraudulent schemes and activities which put PCSO in bad light.
>
> PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[41]

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[40] See *id.* at 7.

[41] See Omnibus Opposition (to the Demurrer to Evidence by accused Arroyo, Valencia, Morato, Roquero, Taruc V, Aguas, and Villar) filed by

In the letter-request dated August 13, 2008, seeking additional CIF funds in the amount of ₱50 Million, Uriarte detailed the purposes as follows:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Donated medicines sometimes end up in drug stores for sale even if they were labelled "Donated by PCSO-Not for Sale";
> 2. Unauthorized expenditures of endowment fund for charity patients and organizations;
> 3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
> 4. Other fraudulent schemes and activities which put PCSO in bad light.
>
> PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[42]

In the letter-request dated April 27, 2009, for ₱10 Million, the purposes were as follows:

> In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:
>
> 1. Unwarranted or unofficial use of ambulances by beneficiary-donees;
> 2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;

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the Official of the Special Prosecutor dated September 14, 2014, p. 73, attached as Annex "P" in Arroyo's Petition in G.R. No. 220598. See also April 6, 2015 Sandiganbayan Resolution, p. 28.

[42] Attached as Annex "Q" in Arroyo's Petition in G.R. No. 220598, p. 74. See also April 6, 2015 Sandiganbayan Resolution, p. 28.

3. Conduct of illegal gambling games (*jueteng*) under [the] guise of Small Town Lottery;
4. Other fraudulent schemes and activities which put PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[43]

In the letter-request dated July 2, 2009, for another ₱10 Million, the stated purposes were:

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Unwarranted or unofficial use of ambulances by beneficiary-donees;
2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;
3. Conduct of illegal gambling games (*jueteng*) under the guise of Small Town Lottery;
4. Other fraudulent schemes and activities which put PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[44]

In the letter-request dated August 19, 2009 seeking additional CIF amounting to ₱50 Million, the following purposes were stated:

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[43] Attached as Annex "S" in Arroyo's Petition in G.R. No. 220598, p. 76. See also April 6, 2015 Sandiganbayan Resolution, p. 29.

[44] Attached as Annex "T" in Arroyo's Petition in G.R. No. 220598, p. 77. See also April 6, 2015 Sandiganbayan Resolution, p. 29.

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Unwarranted or unofficial use of ambulances by beneficiary-donees;

2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;

3. Conduct of illegal gambling games (*jueteng*) under [the] guise of Small Town Lottery;

4. Other fraudulent schemes and activities which put PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of the intelligence fund, PCSO can protect its image and integrity of its operations.[45]

Finally, in the letter-request dated January 4, 2010, for additional CIF funds amounting to ₱150 Million, Uriarte revealed the following purposes:

The Philippine Charity Sweepstakes Office (PCSO) had been conducting the experimental test run for the Small Town Lottery (STL) Project since February 2006. During the last semester of 2009, the PCSO Board has started to map out the regularization of the STL in 2010.

Its regularization will counter the illegal numbers game but will entail massive monitoring and policing using confidential agents in the area to ensure that all stakeholders are consulted in the process.

STL regularization will also require the acceptance of the public. Hence, public awareness campaigns will be conducted nationwide. In the process, we will need confidential funds to successfully implement all these.

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[45] Attached as Annex "R" in Arroyo's Petition in G.R. No. 220598, p. 75. See also April 6, 2015 Sandiganbayan Resolution, p. 29 (erroneously dated as "January 19, 2009 in the Sandiganbayan Resolution).

On top of these, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Donated medicines sometimes end up in drug stores for sale even of (*sic*) they are labeled "Donated by PCSO-Not for Sale";
2. Unauthorized expenditures endowment fund for charity patients and organizations;
3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
4. Other fraudulent schemes and activities which put PCSO in bad light.

In order to save PCSO operating funds, we suggest that the General Manager's Office be given at most, twenty percent (20%) of the [P]ublic Relations [(PR)] Fund or a minimum of 150 Million Pesos, to be used as intelligence/confidential fund. PCSO spent 760 Million for PR in 2009.

The approval on the use of the fifty percent of the PR Fund as PCSO Intelligence Fund will greatly help PCSO in the disbursement of funds to immediately address urgent issues. PCSO will no longer need to seek approval for additional intelligence fund without first utilizing the amount allocated from the PR Fund.[46]

To my mind, the foregoing letter-requests show that, while they are indeed all similarly worded — as pointed out by the Sandiganbayan[47] — it is nonetheless apparent that there was substantial compliance with the guidelines set forth in LOI 1282. In particular, Uriarte's letter-requests: *(a)* indicated the specific purposes for which the additional CIF funds will be spent (*e.g.*, to protect the image and integrity of PCSO operations); *(b)* provided detailed explanations as to the circumstances giving rise for the expenditure and the particular aims to be accomplished

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[46] Attached as Annex "W" in Arroyo's Petition in G.R. No. 220598, p. 78. See also April 6, 2015 Sandiganbayan Resolution, p. 29.

[47] See April 6, 2015 Sandiganbayan Resolution, p. 41.

by the release of additional CIF funds (*e.g.,* the proliferation of fraudulent schemes that affect the integrity of PCSO operations and the need to curb the same); and *(c)* were presented personally to Arroyo for her approval.

To stress, LOI 1282 merely required that requests for additional CIF funds shall "indicate in full detail the specific purposes for which said funds shall be spent," and "explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished."[48] It did not provide for any other parameter as to how the purposes and the underlying circumstances should be particularized, thereby giving the President ample discretion to scrutinize and deem by himself/herself whether or not a letter-request indeed complied with the requirements of LOI 1282. In this case, it must be pointed out that as General Manager of the PCSO, Uriarte enjoyed the full trust and confidence not only of the PCSO Board of Directors who appointed her as such, but also of the President (Arroyo, in this instance), who is the appointing authority of the said board.[49] Hence, when Arroyo placed her "OK" notations on Uriarte's letter-requests, it is as if she deemed such letter-requests compliant with the requirements of LOI 1282. Thus, while the Sandiganbayan correctly examined Arroyo's alleged participation under the lens of her duties under LOI 1282, it, however, erroneously concluded that there was sufficient evidence to prove that she knew of any Plunder conspiracy and henceforth, proceeded to approve the release of CIF funds in furtherance thereof.

The error of the Sandiganbayan is even more evident in relation to COA Circular Nos. 92-385 and 2003-002. This is because there appears to be no basis to render Arroyo accountable under the guidelines and control measures stated in these circulars. Reading their provisions, these issuances apply only to lower-

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[48] See *ponencia*, p. 37.

[49] See RA 1169 entitled "AN ACT PROVIDING FOR CHARITY SWEEPSTAKES, HORSE RACES, AND LOTTERIES" (As Amended by Batas Pambansa Blg. 42 and Presidential Decree No. 1157) (June 18, 1954).

level officials, particularly, the department heads, heads of government owned and controlled corporations, accountable officers, and other COA officers. At most, they only mention that the approval of the President is required before intelligence and confidential funds are to be released.[50] However, the document showing the President's approval is but part of the requirements needed to be ascertained by the various heads and accountable officers as part of their duty to "institute and maintain sound and effective internal control measures to discourage and prevent irregular, unnecessary, excessive, extravagant and unconscionable expenditures as well as promote prudence in the use of government resources by those involved in intelligence/confidential operations."[51] Outside of the duty to approve requests under LOI 1282, **the circulars do not articulate any active responsibility on the part of the President so as to render him/her accountable for the irregular processing of CIF funds**. The foregoing observation is buttressed by the testimony of prosecution witness Flerida Africa Jimenez, Director IV and Head of the Intelligence and Confidential Fund Audit Unit (ICFAU), Office of the Chairman, COA,[52] to wit:

It is not the duty of the President of the Philippines to make or submit the liquidation of the GOCCs. It was not the duty of accused President Arroyo to submit these liquidations to COA. She also did not prepare these reports. She did not have any participation in the preparation of these reports. The reason for this is that she is not the payee or recipient of the CIF. Under the law, the special disbursing officer, who is the accountable officer, prepares the liquidation report. The President is not the accountable officer for CIF because she did not receive or use the CIF.[53]

In sum, considering that Arroyo's "OK" notations in Uriarte's letter-requests are the only pieces of evidence which the

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[50] See 2nd Whereas clause of COA Circular No. 92-385 and Documentary Requirements, Item 2 of COA Circular No. 2003-002.

[51] See COA Circular No. 2003-002.

[52] See April 6, 2015 Sandiganbayan Resolution, pp. 20-27.

[53] See *id.* at 23.

Sandiganbayan used to link her to the Plunder charge, and that the same does not sufficiently prove that she assented to or committed any irregularity so as to facilitate the criminal design, it is my considered opinion that the Sandiganbayan patently erred — and in so doing, gravely abused its discretion — in denying Arroyo's demurrer to evidence. As I see it, the evidence of the prosecution has failed to prove Arroyo's commission of the crime, and her precise degree of participation under the evidentiary threshold off proof of guilt beyond reasonable doubt. While the records do reveal circumstances that may point to certain irregularities that Arroyo may or may not have knowingly committed, in the context of this criminal case for the high crime of Plunder, there lingers reasonable doubt as to her actual knowledge of the criminal design and that her approval of the release of CIF funds was in furtherance thereof. Case law instructs that "[i]ndeed, suspicion no matter how strong must never sway judgment. Where there is reasonable doubt, the accused must be acquitted even though their innocence may not have been established. The Constitution presumes a person innocent until proven guilty by proof beyond reasonable doubt. When guilt is not proven with moral certainty, it has been our policy of long standing that the presumption of innocence must be favored, and exoneration granted as a matter of right."[54] Also, everyone is entitled to the presumption of good faith.[55] While it is indeed tempting to cast the former President in a negative light because of the numerous anomalies involving her, the allure of publicity should not influence the outcome of a decision. Magistrates must be impartial to all that seek judicial succor. Every case

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[54] *People v. Maraorao*, 688 Phil. 458, 467 (2012).

[55] "It is a standing rule that every public official is entitled to the presumption of good faith in the discharge of official duties, such that, in the absence of any proof that a public officer has acted with malice or bad faith, he should not be charged with personal liability for damages that may result from the performance of an official duty. Good faith is always presumed and he who alleges the contrary bears the burden to convincingly show that malice or bad faith attended the public officer's performance of his duties." *Dimapilis-Baldoz v. Commission on Audit*, G.R. No. 199114, July 16, 2013, 703 SCRA 318, 337.

should be decided based on the record and on its merits. The refuge of all presumptions, both of innocence and good faith, should not distinguish between similarly situated suitors.

In contrast, no grave abuse of discretion may be attributed to the Sandiganbayan in denying the demurrer of Aguas as his complicity to the said scheme appears to be supported by sufficient evidence on record. As PCSO Budget and Accounts Manager, Aguas was tasked to audit CIF liquidation reports.[56] In this light, he is bound to comply with the provisions of COA Circular Nos. 92-385 and 2003-002 on the audit of CIF, which includes, *inter alia*, **the proper scrutiny of liquidation reports with the corresponding supporting documents, as well as the submission of the same to the COA chairman before subsequent cash advances may be made**. As exhaustively discussed by the Sandiganbayan, Aguas committed various irregularities in such audit, resulting in the release of additional CIF funds to Uriarte, *viz.*:

In all of the disbursement vouchers covering the cash advances/releases to Uriarte of the CIF funds, Aguas certified that:

> **CERTIFIED: Adequate available funds/budgetary allotment in the amount of ₱_______________; expenditure properly certified; supported by documents marked (X) per checklist and back hereof; account codes proper; previous cash advance liquidated/accounted for**.

These certifications, after close scrutiny, were not true because: 1) **there were no documents which lent support to the cash advances on a per project basis**. The particulars of payment simply read: "To draw cash advance from the CIF Fund of the Office of the Vice-Chairman and General Manager." No particular purpose or project was specified contrary to the requirement under COA Circular 2003-002 that cash advances must be on a per project basis. Without specifics on the project covered by each cash advance, Aguas could not certify that supporting documents existed simply because he would not know what project was being funded by the cash advances; and 2) **There were no previous liquidations made of prior cash advances when Aguas made the certifications**. COA Circular 2003-002 required

[56] See Petition of Aguas in G.R. No. 220953, pp. 8 and 46.

that cash advances be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. If completion of the projects mentioned were for more than one month, a monthly progress liquidation report was necessary. In the case of Uriarte's cash advances certified to by Aguas, the liquidation made was wholesale, *i.e.*, these were done on a semi-annual basis without a monthly liquidation or at least a monthly liquidation progress report. How then could Aguas correctly certify that previous liquidations were accounted for? Aguas's certification also violated Sec. 89 of P.D. 1445 which states:

> Limitations on cash advance. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.

There is a great presumption of guilt against Aguas, as his action aided and abetted Uriarte's being able to draw these irregular CIF funds in contravention of the rules on CIF funds. Without Aguas's certification, the disbursement vouchers could not have been processed for payment. Accordingly, the certification that there were supporting documents and prior liquidation paved the way for Uriarte to acquire ill-gotten wealth by raiding the public coffers of the PCSO.

By just taking cognizance of the series and number of cash advances and the staggering amounts involved, Aguas should have been alerted that something was greatly amiss and that Uriarte was up to something. If Aguas was not into the scheme, it would have been easy for him to refuse to sign the certification, but he did not. The conspiracy "gravamen" is, therefore, present in the case of Aguas. Moreover, Aguas's attempt to cover-up Uriarte's misuse of these CIF funds in his accomplishment report only contributed to unmasking the actual activities for which these funds were utilized. Aguas's accomplishment report, which was conformed to by Uriarte, made it self-evident that the bulk of the CIF funds in 2009 and 2010 were allegedly spent for non-PCSO related activities, *e.g.*, bomb threats, kidnapping, terrorism, and others.[57] (Emphases and underscoring supplied)

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[57] See April 6, 2015 Sandiganbayan Resolution, pp. 32-33.

Since the records show how Aguas evidently ignored his auditing duties and responsibilities in defiance of guidelines and control measures set therefor, there appears to be sufficient evidence to link him as a co-conspirator who had assented and eventually, facilitated Uriarte's amassment, accumulation, or acquisition of CIF funds subject of the present Plunder charge. Therefore, no grave abuse of discretion was committed by the Sandiganbayan in denying Aguas's demurrer to evidence.

As a final point, allow me to submit my reservations on the *ponencia*'s characterization of the concept of a "raid of public treasury" under the auspices of Section 1 (d) of the Plunder Law, *viz.*:

> SECTION 1. Definition of Terms. — As used in this Act, the term —
>
> x x x x x x x x x
>
> d) Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:
>
> 1) Through misappropriation, conversion, misuse, or malversation of public funds or **raids on the public treasury**[.] (Emphasis supplied)

I disagree that the said concept requires — purportedly similar to the accompanying words in the above-cited provision — that personal benefit be derived by the public officer/s so charged. The gravamen of plunder is the amassing, accumulating, or acquiring of ill-gotten wealth by a public officer. Section 1 (d) of the Plunder Law states the multifarious modes under which the amassment, accumulation, or acquisition of public funds would be tantamount to the Plunder of ill-gotten wealth. There is simply no reasonable relation that the requirement of personal benefit commonly inheres in the sense of the words accompanying the predicate act of "raids on public treasury." For one, "misuse" is such a broad term that would encompass the gamut of illegal means and methods for which public funds may be amassed, accumulated, or acquired, without necessarily meaning that the public officer so amassing, accumulating, or acquiring the same

had derived any personal benefit therefrom. Equally perceivable is the connotation given to the word "malversation," which under Article 217 of the Revised Penal Code, can be classified into a type known as "technical malversation." In technical malversation, the public officer applies public funds under his administration not for his or another's personal use, but to a public use other than that for which the fund was appropriated by law or ordinance.[58] In such instance of malversation, there is no necessity to prove that any personal benefit was derived. Thus, based on these observations, I respectfully submit that the doctrine of associated words, or *noscitur a sociis* was misapplied.

In addition, the Sandiganbayan noted that there is no basis under the Congressional deliberations of Plunder Law that personal benefit was required. As may be gleaned therefrom, the phrase "knowingly benefited" had been stricken off from the final text of the law.[59]

Finally, the Sandiganbayan aptly pointed out that: "to require proof that monies went to a plunderer's bank account or was used to acquire real or personal properties for any other purpose to personally benefit the plunderer, is absurd. Suppose a plunderer had already illegally amassed, acquired, or accumulated ₱50 Million or more of government funds and just decided to keep it in his vault and never used such funds for any purpose to benefit him, would that not be plunder? Or, if immediately right after such amassing, the monies went up in flames or recovered by the police, negating any opportunity for the person to actually benefit, would that not still be plunder? Surely, in such cases, a plunder charge could still prosper and the argument that the fact of personal benefit should still be evidence-based must fail."[60] The *ponencia's* appreciation of the Plunder Law tends to deleteriously impact the prosecution of other pending Plunder cases. Unfortunately, the majority has imposed a rule which now requires the State to submit direct proof of personal benefit

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[58] *Parungao v. Sandiganbayan*, 274 Phil. 451, 460 (1991).

[59] See also September 10, 2015 Sandiganbayan Resolution, pp. 8-9.

[60] See September 10, 2015 Sandiganbayan Resolution, p. 10.

for an accused plunderer, as well as those who have conspired with him to be convicted. I strongly criticize this approach as it is practically the case that those who have raided the coffers of our government, especially in light of the fairly recent PDAF[61] controversy and now current litigations, would, in great likelihood, had already hidden the money they stole through ingenious schemes and means. Regrettably, the majority's interpretation tends to enervate the potency of the Plunder Law's force.

**ACCORDINGLY,** for the reasons above-stated, I vote to **GRANT** the petition filed by petitioner Gloria Macapagal-Arroyo in G.R. No. 220598 and **DENY** the petition filed by petitioner Benigno B. Aguas in G.R. No. 220953.

## DISSENTING OPINION

**SERENO*, C.J.*:**

Given the records and pleadings in these cases, I register my dissent from the *ponencia*. Contrary to the *ponencia*'s conclusion, I find that the prosecution has sufficiently alleged and established conspiracy in the commission of the crime of plunder involving, among others, petitioners Gloria Macapagal Arroyo (Arroyo) and Benigno B. Aguas (Aguas). I therefore find no grave abuse of discretion in the Sandiganbayan rulings, which denied petitioners' demurrers and motions for reconsideration.

In sum, my strong objection to the Majority Opinion is impelled by at least five (5) doctrinal and policy considerations.

1. The *ponencia* completely ignores the stark irregularities in the Confidential/Intelligence Fund (CIF) disbursement process and effectively excuses the breach of budget ceilings by the practice of commingling of funds;

2. The *ponencia* retroactively introduces two additional elements in the prosecution of the crime of plunder — the identification of a main plunderer and personal benefit

[61] "Priority Development Assistance Fund."

to him or her — an effect that is not contemplated in the law nor explicitly required by any jurisprudence;

3. The *ponencia* denies efficacy to the concept of implied conspiracy that had been carefully laid down in *Alvizo v. Sandiganbayan*;[1]

4. The *ponencia* creates an unwarranted certiorari precedent by completely ignoring the evidentiary effect of formal reports to the Commission on Audit (COA) that had been admitted by the trial court; and

5. The *ponencia* has grossly erred in characterizing the prosecution's evidence as not showing "even the remotest possibility that the CIFs of the PCSO had been diverted to either [Arroyo] or Aguas or Uriarte,"[2] when petitioner Aguas himself reported to COA that ₱244 million of nearly ₱366 million controverted Philippine Charity Sweepstakes Office (PCSO) funds had been diverted to the Office of the President.

**I**

**The prosecution has sufficiently alleged and established conspiracy among the accused specifically petitioners Arroyo and Aguas.**

Preliminarily, the *ponencia* states that the prosecution did not properly allege conspiracy. I disagree.

*Estrada v. Sandiganbayan*[3] *(2002 Estrada)* is instructive as to when the allegations in the Information may be deemed sufficient to constitute conspiracy. In that case, We stated:

> [I]t is enough to allege conspiracy as a mode in the commission of an offense in either of the following manner: (1) by use of the word conspire, or its derivatives or synonyms, such as confederate, connive, collude, etc.; or (2) by allegation of basic facts constituting the conspiracy in a manner that a person of common understanding

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[1] 454 Phil. 34 (2003).

[2] Decision, p. 42.

[3] G.R. No. 148965, 26 February 2002, 377 SCRA 538.

would know what is intended, and with such precision as would enable the accused to competently enter a plea to a subsequent indictment based on the same facts.[4]

In the Information[5] in this case, all the accused public officers were alleged to have "connived and conspired" in unlawfully amassing, accumulating and acquiring ill-gotten wealth in the total amount of ₱365,997,915 through (a) "diverting funds from the operating budget of PCSO to its [CIF] x x x and transferring the proceeds to themselves x x x for their personal gain and benefit; (b) "raiding the public treasury by withdrawing and receiving x x x and unlawfully transferring or conveying the same into their possession and control;" and (c) "taking advantage of their respective official positions x x x to unjustly enrich themselves x x x at the expense of, and the damage and prejudice of the Filipino people and the Republic of the Philippines."

Contrary to the *ponencia*, I find the allegations above consistent with Our pronouncement in *2002 Estrada*,[6] wherein conspiracy was successfully proven.

On another point, the *ponencia* declares that the prosecution failed to establish or prove conspiracy. A review of the records before us contradicts this position.

The prosecution's theory of the conspiracy to commit plunder is that PCSO funds were repeatedly siphoned off purportedly to fund activities which were not actually conducted — a 3-year process which could not have been accomplished without the indispensable acts of accused public officers who took advantage of their positions to amass nearly ₱366 million.

To appreciate the prosecution's theory of conspiracy, it is necessary to have a bird's eye view of the procedure for disbursement of CIF funds. The testimony before the Sandiganbayan of prosecution witness, Atty. Aleta Tolentino, Chairperson of the PCSO Audit Committee, provides the procedure briefly outlined below:

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[4] *Id.* at 563, 565.

[5] Annex "D" of the Petition.

[6] G.R. No. 148965, 26 February 2002, 377 SCRA 538.

1. Provision or allotment of a budget for the CIF in the Corporate Operating Budget;[7]
2. Approval of the release of the CIF by the President of the Philippines;[8]
3. Designation of a disbursing officer who will have custody of the amounts received as cash advances for the confidential/intelligence (CI) operation;
4. Issuance of the check for the cash advance and disbursement thereof;
5. Liquidation of the CIF cash advances with the documents sent directly by sealed envelope to the COA chairperson or his/her representative;[9] and
6. Clearing of accountability on the basis of the Credit Notice issued by the COA chairperson or his/her representative.[10]

The PCSO funds are comprised of the Prize Fund (PF), Charity Fund (CF) and the Operating Fund (OF). These have specific allotments from PCSO net receipts: 55% for prizes, 30% for charity and only 15% are allotted for operating expenses and capital expenditures.[11] However, the CIF expenditures are by nature operating expenses. Therefore, the funding is and must be sourced from the Operating Fund.

Expenditures for prizes and charity follow strict disbursement, accounting, and liquidation procedures.[12] In contrast, procedures

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[7] *Rollo* (G.R. No. 220598), p. 466; *see* also COA Circular 92-385.

[8] *Id.*; *see* also COA Circular 92-385 and Letter of Instruction No. 1282 (1983).

[9] *Id.* at 466-469; *see* also COA Circulars 92-385 and 2009-02.

[10] *Id.* at 471.

[11] *See* Section 2, Batas Pambansa Blg. 42, An Act Amending the Charter of the Philippine Charity Sweepstakes Office.

[12] See for example, PCSO's answers to Frequently Asked Questions on how to claim prizes and request for medical assistance (http://www.pcso.gov.ph/index.php/frequently-ask-questions/) and its Prize Payment workflow chart (http://www.pcso.gov.ph/wp-content/uploads/2015/03/44.-functional-chart-treas.pdf), both accessed on 6 July 2016).

for CIF expenditures are less strict because of their confidential nature.

Funds for confidential or intelligence projects are usually released as cash advances. Under COA rules, the liquidation documents therefor are sent in sealed envelopes directly to the COA chairperson (or his/her representative).

Given the prosecution's claim that PCSO funds were all commingled in one account, it is easier to see the significance of using the CIF route in diverting funds for personal gain. Utilizing that route minimizes the risks of discovery and the tracking of any anomaly, irregularity, or illegality in the withdrawal of funds.

The lax process of disbursement, accounting, and liquidation has been identified in the field of financial management as a possible, if not perfect, locus for fraud. In *Fraud and Corruption Awareness Handbook, How It Works and What to Look For: A Handbook for Staff,*[13] the World Bank states that fraud thrives in accounting systems with vulnerabilities.[14]

Fraud in financial management (FM) can take the form of either individuals taking advantage of system vulnerabilities to redirect funds for their own purposes, or working with other parties in a collusive set-up. x x x

Theft may range from very small amounts to sophisticated schemes involving large sums of money. **More often than not, theft is performed in a manner that is premeditated, systematic or methodical, with the explicit intent to conceal the activities from other individuals.** Often, it involves a trusted person embezzling only a small proportion or fraction of the funds received, **in an attempt to minimize the risk of detection.** The method usually involves direct and gradual transfers of project funds for personal use or

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[13] *Fraud and Corruption Awareness Handbook, How it Works and What to Look For: A Handbook for Staff*, http://siteresources.worldbank.org/INTDOII/Resources/INT_inside_fraud_text_090909.pdf (last accessed on 15 July 2016).

[14] *Id.*

diversion of payments for legitimate expenses into a personal account.[15] (Emphases ours)

To my mind, the prosecution has successfully established the conspiracy scheme through the various irregularities in the CIF disbursement. These irregularities or red flags clearly spell a conspiracy to commit plunder when the amounts involved and the processes of requesting, approval, and liquidating the amounts are holistically considered.

**The irregularities in the approval, disbursement, and liquidation of the funds**

**First**, when Arroyo approved the requests, the PCSO was operating on a deficit.[16] This situation means that it is irregular to authorize additional CIF when the fund source is negative. It is tantamount to authorizing the use of other PCSO funds — that of the Prize Fund and Charity Fund — for purposes other than those allowed by law.

In 2005, the PCSO had a deficit of ₱916 million.[17] In 2006, the deficit was ₱1,000,078,683.23, ₱215 million of which comprised the CIF expenses. For that year, the CIF budget was only ₱10 million.[18] Otherwise stated, the CIF expense exceeded the budget by ₱205 million.

On the other hand, the CIF disbursements amounted to ₱77,478,705[19] in 2007 when the CIF budget was only ₱25,480,550.[20] The CIF expenditure exceeded its budget by almost ₱52 million.

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[15] *Id.*

[16] *Rollo* (G.R. No. 220598), p. 463; "They were working on a deficit from 2004 to 2009."

[17] *Id.* at 464.

[18] *Id.*

[19] *Id.*

[20] *Id.*

In 2008, Uriarte asked for and received approval from Arroyo for additional CIF in the amount of ₱25 million in April and another ₱50 million in August.[21] In its Corporate Operating Budget (COB) approved in May, the PCSO board allocated ₱28 million for the CIF.[22] The actual disbursement amounted to ₱86,555,060[23] so CIF expenditures were ₱58 million more than its allocated budget.[24]

Four times in 2009, Uriarte asked for and received approval from Arroyo for additional CIF in the total amount of ₱90 million-₱50 million in January, ₱10 million in April, another ₱10 million in July and then ₱20 million in October.[25] The board allocated ₱60 million in its Corporate Operating Budget approved in March.[26] The actual CIF disbursement was ₱138,420,875,[27] so the overspending was more than ₱78 million.

For 2010, Uriarte asked for and received approval from Arroyo for additional CIF in the amount of ₱150 million in January.[28] The board allocated ₱60 million for the CIF in its Corporate Operating Budget, which was approved in March. The CIF disbursement, as of June 2010, was ₱141,021,980,[29] so overspending was by more than ₱81 million.

It is worth noting that from previous allocations of ₱10 million (₱5 million each for the Office of the Chairperson and for the Office of the Vice-Chairperson), the CIF budget was gradually but significantly increased to ₱60 million in 2009 and 2010. Still, additional amounts were requested and authorized, reaching

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[21] *Id.* at 157.

[22] *Id.*

[23] *Id.* at 466.

[24] Or ₱10 million if the budget was ₱28 million.

[25] *Rollo* (G.R. No. 220598), p. 158.

[26] *Id.*

[27] *Id.* at 470.

[28] *Id.* at 158.

[29] *Id.* at 466.

very significant CIF expenditures in the years when the PCSO was on a deficit, from 2004 to 2009. For a fuller context, the information is tabulated:

| Year | CIF Allocation in PCSO COB | Actual CIF Disbursements | CIF Disbursement Over Budget | Additional CIF approved by Arroyo |
|---|---|---|---|---|
| 2006 | ₱10,000,000 | ₱215,000,000 | ₱205,000,000 | *No information* |
| 2007 | ₱25,480,550 | ₱77,478,705 | ₱51,998,155 | *No information* |
| 2008 | ₱28,000,000 | ₱86,555,060 | ₱58,555,060 | ₱75,000,000 |
| 2009 | ₱60,000,000 | ₱138,420,875 | ₱78,420,875 | ₱90,000,000 |
| 2010 | ₱60,000,000 | ₱141,021,980[30] | ₱81,021,980 | ₱150,000,000 |
| **Total** | **₱183,480,550** | **₱658,476,620** | **₱474,996,070** | **₱315,000,000** |

From the above, various irregularities can already be noted. The repeated and unqualified approval of additional CIF was made even when there were no more operating funds left. The requests were made and approved even before the Corporate Operating Budget was approved by the PCSO Board. And the amounts requested were significantly large amounts.

Despite the above facts and figures culled from the records, the *ponencia* remarks that commingling was far from illegal.[31] The *ponencia* downplays the fact that there was no longer any budget when Arroyo approved the requests and considers the approval justified "considering that the funds of the PCSO were commingled into one account x x x." While the act of commingling may not by itself be illegal, the fact that it continued to be successfully maintained despite the COA advice to stop the practice means that it was deliberately used to facilitate the raid of government coffers. The majority should not have downplayed the viciousness of this practice. It is a critical red flag of financial fraud.

**Second**, the prosecution witness testified that for 2009, the recorded CIF expense was only ₱24,968,300, while actual

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[30] For six months, up to June 2010 only.

[31] Decision, p. 29.

vouchers for the CIF cash advances totalled ₱138,420,875.[32] This discrepancy is another red flag.

The CIF cash advances remain as accountabilities of the special disbursing officers until liquidated. After they are properly liquidated and cleared by the COA chairperson or his/her representative, the Confidential/Intelligence expenses are then recorded as such.

The witness found, however, that receivables from Uriarte and Valencia for the CIF disbursements amounting to ₱106,386,800 and ₱90,428,780, respectively, were removed. These were instead recorded as expenses under the Prize Fund and Charity Fund.[33] For 2008, another ₱63.75 million was obtained from the Charity Fund and the Prize Fund.[34]

**These facts and figures are the most compelling evidence of a fraudulent scheme in this case — cash advances being taken as CIF expenses for withdrawal purposes and thereafter being passed off as PF and CF expenses for recording purposes.** Apparently, the reason for taking cash advances from the common (commingled) account as CIF expenses was the relative ease of withdrawal and subsequent liquidation of the funds. On the other hand, the apparent purpose of recording the same cash advances in the books as PF and CF expenses was to avoid detection of the lack of CIF.

Red flags are again readily noticeable here in the form of **missing funds** and **apparent misuse. Missing funds** occur when cash appears to be missing after a "review of transaction documentation and financial documents," while **apparent misuse** happens when funds are spent on "personal or non-business-related" matters.[35]

The prosecution witness pointed out these red flags as follows:

The witness also related that she traced the records of the CIF fund (since such was no longer stated as a receivable), and reviewed

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[32] *Rollo* (G.R. No. 220598), p. 476.

[33] *Id.*

[34] *Id.*

[35] *See* note 13.

whether it was recorded as an expense in 2008. She found out that the recorded CIF fund expense, as recorded in the corporate operating budget as actually disbursed, was only ₱21,102,000. **As such, she confronted her accountants and asked them "*Saan tinago itong amount na to*?"** The personnel in the accounting office said that the balance of the ₱86 million or the additional ₱21 million **was not recorded in the operating fund budget because they used the prize fund and charity fund as instructed by Aguas.** Journal Entry Voucher No. 8121443 dated December 31, 2008, signed by Elmer Camba, Aguas (Head of the Accounting Department), and Hutch Balleras (one of the staff in the Accounting Department), showed that this procedure was done. x x x

Attached to the Journal Entry Voucher was a document which reads "Allocation of Confidential and Intelligence Fund Expenses," and was the basis of Camba in doing the Journal Entry Voucher. In the same document, **there was a written annotation** dated 12-31-2008 which reads that the adjustments of CIF, CF and IF, **beneficiary of the fund is CF and PF and signed by Aguas.**

The year 2009 was a similar case x x x.[36] (Emphases ours)

From the foregoing, the participation of petitioner Aguas is established. He was intimately privy to the transactions and to the scheme. His participation was necessary for diverting the funds from the Prize Fund and the Charity Fund to underwrite the lack of Operating Fund for the CIF cash advances. He is thus proven to have committed an indispensable act in covering the tracks of Uriarte and Valencia, as will be explained further.

**Third**, witness Tolentino reported that for their respective cash advances, Uriarte and Valencia approved the vouchers certifying the necessity and the legality of the disbursement and thereafter authorized the payment thereof. They also co-signed with the treasurer the checks payable to their own names.

Thus, a situation in which the same person approved the disbursement and signed the check for payment to that same person is readily observed. This situation is irregular. In the usual course of things, payees do not get to approve vouchers and sign checks payable to themselves.

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[36] *Rollo* (G.R. No. 220598), p. 475.

The witness further found that while Uriarte was authorized by the Board of Directors[37] to be the Special Disbursing Officer (SDO), Valencia designated himself as the SDO for his own cash advances, upon the recommendation of COA Auditor Plaras.[38] Under COA rules, the Board of Directors, not the Chairperson, has authority to designate SDOs.

The usual check-and-balance mechanism for the segregation of duties was therefore totally ignored. The disregard of that mechanism strongly indicates an intention to keep knowledge of the transactions to as few people as possible. In fraudulent schemes, risks of detection are avoided by keeping the conspiracy or connivance known to as few people as necessary. This is therefore another red flag.

**Fourth**, the accountabilities of Uriarte and Valencia for the CIF cash advances they availed of were removed from the records on the basis of the issuance of a Credit Notice. And this issuance of credit notice by COA CIF Unit Head Plaras is also marked by irregularities.[39]

The relevant testimony of prosecution witness Atty. Aleta Tolentino is summed up by the Sandiganbayan in its Resolution dated 5 November 2013 as follows:

> As regards the sixth step — the credit notice, the same was not validly issued by the COA. The credit notice is a settlement or an action made by the COA Auditors and is given once the Chairman, in the case of CIF Fund, finds that the liquidation report and all the supporting papers are in order. In this case, the supporting papers and the liquidation report were not in order, hence, the credit notice should not have been issued. Further, the credit notice has to follow a specific form. The COA Chairman or his representative can: 1) settle the cash advance when everything is in order; 2) suspend the settlement if there are deficiencies and then ask for submission of the deficiencies; or 3) out rightly disallow it in case said cash advances are illegal, irregular or unconscionable, extravagant or excessive. **Instead of**

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[37] *Id.* at 467.

[38] *Id.*

[39] *Id.* at 471.

**following this form, the COA issued a document dated January 10, 2011, which stated that there is an irregular use of the price fund and the charity fund for CIF Fund.** The document bears an annotation which says, "wait for transmittal, draft" among others. **The document was not signed by Plaras, who was the Head of the Confidential and Intelligence Fund Unit under COA Chairman Villar.** Instead, she instructed her staff to "please ask Aguas to submit the supplemental budget." This document was not delivered to PCSO General Manager J.M. Roxas. They instead received another letter dated January 12, 2011 which was almost identical to the first document, except it was signed by Plaras, and the finding of the irregular use of the prize fund and the charity fund was omitted. Instead, the word "various" was substituted and then the amount of ₱137,500,000. **Therefore, instead of the earlier finding of irregularity, suddenly, the COA issued a credit notice as regards the total of ₱140,000,000. The credit notice also did not specify that the transaction has been audited, indicating that no audit was made.**[40] (Emphases ours)

In effect, Uriarte and Valencia were cleared of the responsibility to liquidate their CIF cash advances, thereby rendering the funds fully in their control and disposition.

The clearance made by COA Auditor Plaras, despite the presence of several irregularities, is another red flag — a species of **approval override** which ignores an irregularity with respect to payment.[41]

**Finally,** the purposes for the amounts were supposedly for the conduct of CIF activities as reflected in the accomplishment report but these activities were subsequently belied by testimonial evidence. **The prosecution in this regard sufficiently established an aspect of the conspiracy scheme by showing that the final destination of the amount was linked to petitioner Arroyo and her Office as admitted by a co-conspirator.**

In its Resolution dated 6 April 2015, the Sandiganbayan stated the following:

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[40] *Id.*

[41] See note 13.

In an attempt to explain and justify the use of these CIF funds, Uriarte, together with Aguas, certified that these were utilized for the following purposes:

a) Fraud and threat that affect integrity of operation.
b) Bomb threat, kidnapping, destabilization and terrorism.
c) Bilateral and security relation.

According to Uriarte and Aguas, **these purposes were to be accomplished through "cooperation" of law enforcers which include the military, police and the NBI.** The second and third purposes were never mentioned in Uriarte's letter-requests for additional CIF funds addressed to Arroyo. Aguas, on the other hand, issued an accomplishment report addressed to the COA, **saying that the "Office of the President" required funding from the CIF funds of the PCSO to achieve the second and third purposes abovementioned.** For 2009 and 2010, the funds allegedly used for such purposes amounted to ₱244,500,000.

Such gargantuan amounts should have been covered, at the very least, by some documentation covering fund transfers or agreements with the military, police or the NBI, notwithstanding that these involved CIF funds. **However, all the intelligence chiefs of the Army, Navy, Air Force, the PNP and the NBI, testified that for the period 2008-2010, their records do not show any PCSO-related operations involving any of the purposes mentioned by Uriarte and Aguas in their matrix of accomplishments.** Neither were there any memoranda of agreements or any other documentation covering fund transfers or requests for assistance or surveillance related to said purposes. x x x **As it stands, the actual use of these CIF funds is still unexplained.**[42] (Citations omitted and emphases ours)

These statements made by the anti-graft court are not without any legal or factual basis.

In the Formal Offer of Exhibits for the Prosecution dated 4 June 2014 in addition to the Exhibits previously offered in evidence on the Formal Offer of Exhibits for the Prosecution dated 26 February 2013, various pieces of documentary evidence were presented. Among them are the certifications made by Uriarte and Aguas. The most pertinent of these are the following:

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[42] *Id.* at 163-164.

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|---|---|
| Exhibit "$Z^7$-14" | PCSO Matrix of Intelligence Accomplishments for the period of January 2009 to December 2009 dated March 9, 2010 |
| Exhibit "$Z^7$ -17" | PCSO Matrix of Intelligence Accomplishments for the period of January 2009 to December 2009 |
| Exhibit "$Z^7$-42" | Letter dated February 8, 2010 addressed to Reynaldo A. Villar, Chairman, COA, from Rosario C. Uriarte, showing the amount of ₱73,993,846.00 as the Total IF advanced and liquidated covering the period of July 1 to December 31, 2009 |
| Exhibit "$Z^7$-72" | Letter dated February 8, 2010 addressed to Reynaldo A. Villar, Chairman, COA, from Sergio O. Valencia, PCSO Chairman, re: cash advances and liquidation made from the Intelligence/Confidential Fund in the amount of ₱2,394,654.00 |
| Exhibit "$Z^7$-84" | Letter dated October 19, 2009 addressed to Reynaldo A. Villar, Chairman, COA, from Sergio O. Valencia, re: various cash advances and liquidation made from the Intelligence/Confidential Fund in the amount of ₱2,498,300.00 |
| Exhibit "$A^8$-16" | Matrix of Intelligence Accomplishment period covered January 2010 to June 2010 dated 06.29.10 prepared by OIC, Manager, Budget and Accounting Department and Reviewed by Vice Chairman and General Manager dated 06.29.10 |
| Exhibit "$A^8$-35" | PCSO Matrix of Intelligence Accomplishment from January 2010 to June 2010 |
| Exhibit "$A^8$-55" | PCSO Matrix of Intelligence Accomplishment from January 2010 to June 2010 |

Exhibit "$Y^7$-68," the Accomplishment Report on the Utilization of the CIF of the PCSO, is most crucial. In this report, petitioner Aguas specifically stated:

But what is more pronounce (sic) in the disposition and handling of the CIF was those activities and programs coming from the Office of the President which do not only involved the PCSOs (sic) operation but the national security threat (destabilization, terrorist act, bomb scare, etc.) in general which require enough funding from available sources coming from different agencies under the Office of the President.

These pieces of documentary evidence were used as basis by the Sandiganbayan to conclude that the Office of the President had required and received the CIF funds of the PCSO to purportedly achieve the second and third purposes, i.e., bomb threat, kidnapping, destabilization and terrorism and bilateral and security relation, respectively. **The testimonies of all the intelligence chiefs of the Army, Navy, Air Force, the Philippine National Police and the National Bureau of Investigation, however, all prove that for the period 2008-2010, there never was any PCSO-related or funded operation.**

**The conspiracy is thus sufficiently shown through the repeated approvals of Arroyo of additional CIF requests in the course of three years; the irregularities in the disbursement, accounting, and liquidation of the funds and the active participation therein of the accused; and finally, a showing that the Office of the President, which Arroyo controlled, was the final destination of the amounts. The CIF releases would not have been made possible without the approval of Arroyo. The funds could not have been disbursed without the complicity and overt act of Aguas. Uriarte (the one who received the amounts) was definitely part of the scheme. Aguas could not have cleared Uriarte (and Valencia) without the credit notice of Plaras. Thus, the connivance and conspiracy of Arroyo, Uriarte, Valencia, Aguas and Plaras are clearly established.**

**Relevant Plunder Law provisions and jurisprudence in relation to the case**

Section 4 of the Plunder Law states:

Section 4. *Rule of Evidence*. — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every

criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

For purposes of proving the crime of plunder, proof of each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth is not required. Section 4 deems sufficient the establishment beyond reasonable doubt of "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy."

*Estrada v. Sandiganbayan*[43] *(2001 Estrada)* provides an instructive discussion on "pattern" by using the provisions of the Anti-Plunder Law:

> [A] 'pattern' *consists of at least a combination or series of overt or criminal acts enumerated in subsections* (1) to (6) of Sec. 1 (d). Secondly, pursuant to Sec. 2 of the law, the pattern of overt or criminal acts is *directed towards a common purpose or goal which is to enable the public officer to amass, accumulate or acquire ill-gotten wealth.* And thirdly, there must either be an '*overall unlawful scheme' or 'conspiracy'* to achieve said common goal. As commonly understood, the term 'overall unlawful scheme' indicates a 'general plan of action or method' which the principal accused and public officer and others conniving with him, follow to achieve the aforesaid common goal. In the alternative, if there is no such overall scheme or where the schemes or methods used by multiple accused vary, the overt or criminal acts must form part of a conspiracy to attain a common goal.[44]

By "series," *Estrada* teaches that there must be at least two overt or criminal acts falling under the same category of enumeration found in Section 1, paragraph (d) of the Anti-Plunder Law, such as misappropriation, malversation and raids on the public treasury, all of which fall under Section 1, paragraph (d), subparagraph (1) of the law.[45]

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[43] 421 Phil. 290, 515.

[44] *Id.*

[45] *Id.*

With respect to "combination," *Estrada* requires at least two acts that fall under the different categories of the enumeration given by Section 1, paragraph (d) of the Plunder Law. Examples would be raids on the public treasury under Section 1, paragraph (d), subparagraph (1), and fraudulent conveyance of assets belonging to the National Government under Section 1, paragraph (d), subparagraph (3).

For ease of reference, Section 1 (d) is quoted below:

SECTION 1 . . . . . (d) "Ill-gotten wealth" means any asset, property, business, enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public office concerned;

(3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities, or government owned or controlled corporations and their subsidiaries;

(4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(6) By taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

It is well to note, too, that conspiracy may be made by evidence of a chain of circumstances.[46] It may be established from the **"mode, method, and manner** by which the offense was perpetrated, or inferred from the acts of the accused themselves when such acts point to a **joint purpose and design, concerted action and community of interest."**[47]

Our pronouncement in *Alvizo v. Sandiganbayan*[48] is instructive:

> Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only. (citations omitted)[49]

**The indispensable role of petitioner Arroyo**

In this regard, Arroyo's approval now assumes greater significance. Petitioner Arroyo's act — her repeated and unqualified approval — represented the necessary and indispensable action that started the "taking" process. The repeated approval of the requests in the course of three years

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[46] *People v. Bergonia*, 339 Phil. 284 (1997).

[47] *Salapuddin v. Court of Appeals*, 704 Phil. 577 (2013).

[48] 454 Phil. 34 (2003).

[49] *Id.* at 106.

is the crucial and indispensable act without which the amount of nearly ₱366 million could not have been plundered.

The *ponencia* rules that the prosecution failed to establish an overt act in furtherance of the conspiracy, either on the part of petitioner Arroyo or Aguas. It reasons that Arroyo's "mere approval"[50] of Vice Chairman and General Manager Uriarte's requests for CIF did not make her part of any criminal conspiracy. On the other hand, as regards petitioner Aguas, the *ponencia* explains that "without GMA's participation, he could not release any money because there was then no budget available for the additional CIFs. Whatever irregularities he might have committed did not amount to plunder, or to any conspiracy to commit plunder."[51]

These pronouncements, however, are perceptibly conflicted. Contrary to the pronouncements of the *ponencia*, Arroyo's manner of approving requests for additional CIFs, seven times in the course of three years, reveals the initial, indispensable act in the conspiracy to commit plunder. All the individual acts of the conspirators from the time the requests were approved until the moment the amounts were finally in the Office of the President indicate a complete whole. The intent to accumulate, amass, or acquire the PCSO funds is thus shown through the successive acts which at first appear to be independent but, in fact, are connected and cooperative. The chain of circumstances from the inscription of a mere "ok" of petitioner Arroyo on all the requests, up to the time the amounts were proven to be with the Office of the President as indicated in the accomplishment report (Exhibit "$Y^7$-68") sufficiently proves the conspiracy to commit plunder.

In other words, Arroyo's approval of Uriarte's request cannot be simply downplayed as an innocent, legal, common and valid practice, as the *ponencia* would want, to exonerate Arroyo and Aguas. As aptly stated by the Sandiganbayan:

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[50] Decision, p. 27.

[51] *Id.* at 40.

While it is true that Arroyo was never involved in the actual withdrawals/cash advances and release of the CIF or in their disbursements and its liquidation, Arroyo's approval of the grant and release of these funds facilitated Uriarte's commission of the series of raids on PCSO coffers because without Arroyo's approval of the release, Uriarte could not have succeeded in accumulating the same.[52]

**The power of control over the PCSO of petitioner Arroyo**

Given the totality of the circumstances discussed above, the prosecution's claim that Arroyo had known that Uriarte would raid the public treasury and misuse the funds the latter had disbursed, owing to the fact that the former President had the power of control over the PCSO, consequently appears to be correct.

The *ponencia*, however, misses this point and deliberately chooses to reject the prosecution's claim by stating that the doctrine of command responsibility does not apply since this case does not involve Arroyo's functions as Commander-in-Chief of the Armed Forces of the Philippines, or a human rights issue.

Contrary to that statement of the *ponencia*, however, the control of the President, not only over the PCSO, but also over the intelligence funds, is clearly mandated by Letter of Instruction No. (LOI) 1282 which sheds light on the role of the President when it comes to the expenditure of intelligence funds. LOI 1282 provides:

> In recent years intelligence funds appropriated for the various ministries and certain offices have been, as reports reaching me indicate, spent with less than full regard for secrecy and prudence. On the one hand, there have been far too many leakages of information on expenditures of said funds; and on the other hand, where secrecy has been observed, **the President himself was often left unaware of how these funds had been utilized.**

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[52] *Rollo* (G.R. No. 220598), p. 502.

Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished.

The requests and the detailed explanations shall be submitted to the President **personally**.

It is imperative that such detailed presentations be made to the Presidents in order **to avoid such duplication of expenditures** as has taken place in the past because of the lack of centralized planning and organized disposition of intelligence funds.

Full compliance herewith is desired. (Emphases ours)

**The foregoing shows the nature of the control of the President over the intelligence funds. Unless Arroyo were to demonstrate in her defense, the responsibility and control of intelligence funds is direct and personal. The irregularities that transpired should therefore be within the knowledge of Arroyo as President of the Philippines, considering the fact that this case involves not one but repeated and unqualified approval of seven requests for release of CIF funds in a span of three years.** Even the *ponencia* admits: "[w]ithout GMA's participation, he (Aguas) could not release any money because there was then no budget available for the additional CIFs."[53]

## II

## There is evidence to show that Uriarte, Arroyo, or Aguas amassed, accumulated, or acquired ill-gotten wealth.

The *ponencia* states that "the Prosecution adduced no evidence showing that either Arroyo or Aguas or even Uriarte, for that matter, had amassed, accumulated or acquired ill-gotten wealth of any amount. It also did not present evidence, testimonial or otherwise, showing even the remotest possibility that the CIFs of the PCSO had been diverted to Arroyo, Aguas, or Uriarte."[54] I must disagree.

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[53] Decision, p. 40.

[54] *Id.* at 42.

As held by this Court in *2001 Estrada*,[55] the only elements of the crime of plunder are the following:

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.

To emphasize, the prosecution, as previously discussed, presented evidence proving that Uriarte had made several cash advances. The Sandiganbayan quoted pertinent parts of its

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[55] 421 Phil. 290, 515.

Resolution dated 5 November 2013 denying the petitions for bail in its Resolution dated 6 April 2015 denying the petitioners' demurrers. The Sandiganbayan stated therein that "Uriarte was able to accumulate during that period CIF funds in the total amount of ₱352,681,646;" that "Uriarte looted government funds and appears to have not been able to account for it;" and that "the encashment of the checks, which named her as the 'payee,' gave Uriarte material possession of the CIF funds that she disposed of at will."[56]

From January 2008 to June 2010, the following cash advances were made:

| | **2008** | **2009** | **2010** | **Total** |
|---|---|---|---|---|
| **CIF in the COB from the previous 10M CIF in 2000** | ₱28,000,000 | ₱60,000,000 | ₱60,000,000 | **₱148,000,000** |
| **Additional CIF requested by Uriarte and granted by Arroyo** | ₱75,000,000 | ₱90,000,000 | ₱150,000,000 | **₱315,000,000** |
| **Cash advances by Uriarte** | ₱81,698,060 | ₱132,760,096 | ₱138,223,490 | **₱352,681,646** |
| **Cash advances by Valencia** | ₱4,857,000 | ₱5,660,779 | ₱2,798,490 | **₱13,316,269** |
| **TOTAL** | ₱86,555,060 | ₱138,420,875 | ₱141,021,980 | **₱365,997,915** |

Again, in its 6 April 2015 Resolution, the Sandiganbayan considered the accomplishment report that was submitted by petitioner Aguas to COA. He said therein that the Office of the President required funding from the CIF funds of the PCSO to achieve the second and the third purposes, i.e., bomb threat, kidnapping, destabilization and terrorism; and bilateral and security relation.[57]

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[56] *Id.* at 160; Sandiganbayan Resolution dated 6 April 2015, p. 31.

[57] *Id.* at 163.

The act of amassing, accumulating, or acquiring CIF funds is thus evident. I agree with the Sandiganbayan's pronouncement that Arroyo was rightly charged as a co-conspirator of Uriarte who received the cash advance for most of the amounts.[58]

It had been argued that receipt by the Office of the President is not necessarily receipt of the moneys by Arroyo. This however is a matter of defense, considering that Arroyo controls the Office of the President.

**III**
**Personal benefit need not be proven.**

The *ponencia* harps on the failure of the prosecution to allege in the Information and prove that the amount amassed, accumulated, and acquired was for the benefit of an identified main plunderer.

In particular, the *ponencia* leans on this Court's pronouncement that what is required in a conspiracy charge is not that every accused must have performed all the acts constituting the crime of plunder, but that "each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada."[59]

The *ponencia* also takes issue with the Sandiganbayan's statement that all that is required is that the public officer must have raided the public coffers, without need to prove personal benefit on the part of the public officer.

It cites the deliberations on Senate Bill No. 733, which later on became Republic Act No. 7080, to support the thesis that personal benefit on the part of the main plunderer, or the co-conspirators by virtue of their plunder, is still necessary. It then concludes that the prosecution failed to show not only where the money went but, more important, whether Arroyo and Aguas had personally benefited therefrom.

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[58] *Rollo* (G.R. No. 220598), p. 205; Sandiganbayan Resolution dated 10 September 2015.

[59] *Id.*

To begin with, the failure of the Information to name the main plunderer in particular is not crucial.

Section 2 of the Plunder Law does not require a mastermind or a main recipient when it comes to plunder as a collective act:

Section 2. *Definition of the Crime of Plunder; Penalties*. — Any **public officer** who, **by himself or in connivance** with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or **acquires ill-gotten wealth** through a **combination or series of overt criminal acts** as described in Section 1 (d) hereof in the aggregate amount or total value **of at least Fifty million pesos (₱50,000,000.00)** shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State. (Emphasis ours)

On the other hand, as can be seen from above, all that is required by Section 2 is that there is a public officer who acts in connivance with other offenders in a common design to amass, accumulate or acquire ill-gotten wealth, the aggregate amount of which is at least ₱50 Million. In other words, it is only the conspiracy that needs to be alleged in an Information.

In a conspiracy, the act of one is the act of all.[60] Every conspirator becomes a principal even if the person did not participate in the actual commission of every act constituting the crime.[61] Hence, it is not material if only Uriarte among all the accused is proven or shown to have taken material possession of the plundered amount.

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[60] *U.S. v. Ipil*, 27 Phil. 530 (1914).

[61] *Id.*

It is thus not crucial to identify the main plunderer in the Information, so long as conspiracy is properly alleged and established. Identification in the Information of the main plunderer or the accused who acquires the greatest loot is immaterial, as it suffices that any one or two of the conspirators are proven to have transferred the plundered amount to themselves.

In this case, there is ample evidence to show that Uriarte gained material possession of the amounts through cash advances facilitated by the repeated and unqualified approval of the requests by Arroyo and that a large portion of the amount received as cash advance was later certified by Aguas to have been used by the Office of the President.

What should be underscored at this juncture is that in prosecution for plunder, it is enough that one or more of the conspirators must be shown to have gained material possession of at least ₱50 million through any or a combination or a series of overt criminal acts, or similar schemes or means enumerated in the law and stated in the Information.

Our ruling in *Valenzuela v. People*,[62] a theft case, is instructive:

> The ability of the offender to freely dispose of the property stolen is not a constitutive element of the crime of theft. x x x To restate what this Court has repeatedly held: the elements of the crime of theft as provided for in Article 308 of the Revised Penal Code are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.
>
> x x x **it is immaterial to the product of the felony that the offender, once having committed all the acts of execution for theft, is able or unable to freely dispose of the property stolen since the deprivation from the owner alone has already ensued from such acts of execution.** This conclusion is reflected in Chief Justice Aquino's commentaries, as earlier cited, **that [i]n theft or robbery**

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[62] G.R. No. 160188, 21 June 2007.

**the crime is consummated after the accused had material possession of the thing with intent to appropriate the same, although his act of making use of the thing was frustrated.**

x x x x x x x x x

Indeed, we have, after all, held that **unlawful taking, or *apoderamiento*, is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.**

So it is with plunder. How the money was disposed of and who inevitably benefited the most therefrom among all the accused need not be shown for as long as material possession of at least ₱50 million was shown through the unlawful acts mentioned in the law.

I quote with approval the Sandiganbayan in its pronouncement, as follows:

It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept of personal gain/ benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a "raid on the public treasury" can be said to have been achieved thru the pillaging or looting of public coffers either through misuse, misappropriation or conversion, without need of establishing gain or profit to the raider. Otherwise stated, **once a "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed.** x x x

x x x x x x x x x

It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008-2010. Uriarte was able to accumulate during that period CIF funds in the total amount of ₱352,681,646. x x x

x x x x x x x x x

These flagrant violations of the rules on the use of CIF funds evidently characterize the series of withdrawals by and releases to Uriarte as "raids" on the PCSO coffers, which is part of the public treasury. These were, in every sense, "pillage," as Uriarte looted

government funds and appears to have not been able to account for it. The monies came into her possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus, amounting to "misuse" of the same. Therefore, the additional CIF funds are ill-gotten, as defined by R.A. 7080, the PCGG rules, and *Republic v. Sandiganbayan*. **The encashment of the checks, which named her as "payee," gave Uriarte material possession of the CIF funds which she disposed of at will.**

x x x x x x x x x

x x x **These were thus improper use of the additional CIF funds amounting to raids on the PCSO coffers and were ill-gotten because Uriarte had encashed the checks and came into possession of the monies, which she had complete freedom to dispose of, but was not able to account for.** (Emphases ours)

These matters considered, I find the pronouncements in the *ponencia* unwarranted.

## IV
## Arroyo and Aguas failed to show evidence that the Sandiganbayan gravely abused its discretion.

Section 23 of Rule 119 states:

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

If the court denies the demurrer to evidence filed with leave of court, **the accused may adduce evidence in his defense.** When the demurrer to evidence is filed without leave of court, the accused waives the right to present evidence and submits the case for judgment on the basis of the evidence for the prosecution. (15a)

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

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

The prosecution may oppose the demurrer to evidence within a similar period from its receipt.

**The order denying the motion for leave of court to file demurrer to evidence or the demurrer itself shall not be reviewable by appeal or by certiorari before judgment. (n)**[63] (Emphases supplied)

Jurisprudence has affirmed the rule, subject to the recognized exception that the denial of a demurrer may be the proper subject of a Rule 65 petition when the denial is tainted with grave abuse of discretion.[64]

Certiorari therefore is not the proper recourse against a denial of a demurrer to evidence. Under the Rules of Court, the appropriate remedy is for the court to proceed with the trial, after which the accused may file an appeal from the judgment rendered by the lower court.

Consequently, I am not prepared to impute grave abuse of discretion on the part of the Sandiganbayan. For reasons already discussed, the prosecution's evidence has satisfactorily established the elements of the crime of plunder.

Further, it must be emphasized that access to this Court through a Rule 65 petition is narrow and limited. That recourse excludes the resolution of factual questions.[65] In the present case, the question of whether a denial of the demurrer to evidence is proper is factual in nature, as it involves a test of the sufficiency of evidence.

This Court has made a pronouncement on the nature of a demurrer to evidence in this wise:

[A d]emurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced

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[63] Revised Rules of Criminal Procedure, A.M. No. 00-5-03-SC, 3 October 2000.

[64] *People v. Go*, G.R. No. 191015, 6 August 2014, 732 SCRA 216, and *Alarilla v. Sandiganbayan*, 393 Phil. 143 (2000).

[65] *Don Orestes Romualdez Electric Cooperative, Inc. v. NLRC*, 377 Phil. 268 (1999).

is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency of the whole evidence to sustain a verdict. **The court, in passing upon the sufficiency of the evidence raised in a demurrer, is merely required to ascertain whether there is competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.**[66]

What constitutes sufficient evidence has also been defined as follows:

> Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded according to the circumstances. To be considered sufficient therefore, the evidence must prove: (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.[67]

When there is no showing of such grave abuse, certiorari is not the proper remedy. Rather, the appropriate recourse from an order denying a demurrer to evidence is for the court to proceed with the trial, after which the accused may file an appeal from the judgment of the lower court rendered after such trial. In the present case, I am not prepared to rule that the Sandiganbayan has gravely abused its discretion when it denied petitioners' demurrer to evidence. The Sandiganbayan found that the prosecution's evidence satisfactorily established the elements of the crime charged. There is nothing in the records of this case, nor in the pleadings of petitioners that would show otherwise.

Further, it must be borne in mind that the Sandiganbayan is a constitutionally-mandated tribunal designed to resolve cases involving graft and corruption. As such, it is the expert in the field of graft cases. On the other hand, this Court is not a trier of facts. The Sandiganbayan must be allowed to complete the entire course of the trial as it sees fit.

**A final note.** The crime charged, the personalities involved, the amount in question, and the public interest at stake — are

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[66] *Gutib v. CA*, 371 Phil. 293 (1999).

[67] *Id.* at 305.

considerations that should prompt us to demonstrate an even hand, conscious that the benefits of the Decision would cascade to the least powerful accused in all future proceedings. We must be mindful of the potentially discouraging impact of a grant of this particular demurrer on the confidence of trial courts.

Nearly ₱366 million of the People's money is missing. Direct documentary evidence whereby petitioner Aguas states that a large part of this or ₱244.5 million to be exact was diverted to the Office of the President under petitioner Arroyo was considered sufficient by the Sandiganbayan to require both petitioners herein to proceed with the presentation of their defense evidence. This cogent conclusion by the constitutionally-mandated court that has tried the prosecution's evidence on plunder cannot be overridden willy-nilly by this Court.

I further fully agree with Justice Marvic Mario Victor F. Leonen in his Separate Dissenting Opinion.

I therefore vote to **DISMISS** the petitions.

## DISSENTING OPINION

**LEONEN, *J.*:**

With respect, I dissent.

Gloria Macapagal-Arroyo was a highly intelligent President who knew what she was doing. Having had an extraordinary term of nine (9) years as President of the Philippines, she had the experience to make her wise to many, if not all, of the schemes perpetrated within the government bureaucracy that allowed the pilferage of public coffers especially if these were repeated acts in ever-increasing amounts reaching millions of pesos. As President, it was her duty to stop — not abet or participate — in such schemes.

Gloria Macapagal-Arroyo, as a highly intelligent and experienced President, was aware that the power to increase the allocation and, therefore, disbursement of additional confidential and intelligence funds (CIF) of the Philippine Charity

and Sweepstakes Office (PCSO) was hers alone. She was aware that this power was discretionary on her part. She did not have to approve any request for increase if it was not properly supported by adequate funds and the enumeration of specific activities.

She was also aware that, as President who occupied the highest office imbued with public trust, it was her duty under the Constitution and our laws that all the financial controls supported by audit observations be complied with to ensure that all funds be disbursed in a regular manner and for legitimate purposes. She knew that it was her duty to scrutinize if repeated requests for increases in these funds especially in ever-increasing amounts in the millions of pesos were done regularly and for legitimate ends.

After all, the President is the Chief Executive. Along with the awesome powers and broad discretions is likewise the President's duty to ensure that public trust is respected. The regular and legitimate allocation, disbursement, and use of funds — even confidential and intelligence funds — are matters of grave public trust.

It is not possible to assume that Gloria Macapagal Arroyo, the President of the Philippines, was not intelligent, not experienced and, at the time she held office, powerless to command the huge bureaucracy once under her control and to stop schemes that plundered our public coffers.

Increases in the allocation of CIF of PCSO were made possible only with the approval of Gloria Macapagal-Arroyo as President. Within the period from 2008 to 2010, there was not only one increase. There were several. The additional allocations for CIF were of increasing amounts running into the hundreds of millions of pesos. In 2010 alone, it was One Hundred Fifty Million Pesos (₱150,000,000.00). The General Manager of the PCSO was able to disburse more than One Hundred Thirty Eight Million Pesos (₱138,000,000.00) to herself. That disbursement remains unaccounted.

There was testimony that during these years, the PCSO was in deficit. Despite continued annual warnings from the

Commission on Audit with respect to the illegality and irregularity of the co-mingling of funds that should have been allocated for the Prize Fund, the Charitable Fund, and the Operational Fund, this co-mingling was maintained. This made it difficult to ensure that the CIF will only be charged to the Operational Fund and that the Operational Fund would be kept at the required percentage of the revenues of the PCSO.

Gloria Macapagal-Arroyo, as President, approved the increases in the allocation and thus facilitated the disbursement of CIF despite the irregular co-mingling of funds. She approved the ever-increasing additions to the CIF of PCSO even without a showing that this government corporation had savings. She approved the additional allocation in increasing amounts on the strength of pro-forma requests without anything on record to show that she required explanation why the regular budget for CIF was insufficient. There was nothing to show that her repeated approval of ever-increasing amounts running into the millions of pesos was preceded with her inquiry as to why there was really a need to continue to increase the allocations and the disbursements in those amounts.

In 2008, 2009, and 2010, she approved increases in allocation for the CIF in millions of pesos even before the PCSO Board was able to approve its regular corporate budget (COB).

All these are supported by the evidence presented by the prosecution.

The scheme to amass and accumulate ₱365,997,915.00 in cash of CIF required the indispensable participation of the President in its approval and its actual disbursement in cash by the General Manager of the PCSO. The raid on public coffers was done in a series or combination of acts. The use of the funds was not properly accounted.

The Information filed against petitioners and their co-accused unequivocally charged them with conspiring to commit this type of plunder.

The demurrers to evidence of petitioners Gloria Macapagal-Arroyo and Benigno B. Aguas were properly denied as the

prosecution's evidence showed that, as part of a conspiracy, they engaged in acts constituting plunder. The evidence demonstrated that they participated in a protracted scheme of raiding the public treasury aimed at amassing ill-gotten wealth.

It is of no consequence, as the *ponencia* harps on, that petitioners' specific and direct personal benefit or enrichment is yet to be established with unmitigated certainty. I echo the position taken by Associate Justice Estela Perlas-Bernabe: "raids on the public treasury" — as articulated in Section 1 (d) of Republic Act No. 7080, the law penalizing plunder — does not require "that personal benefit be derived by the [persons] charged."[1]

The rule on demurrer to evidence in criminal proceedings is clear and categorical.[2] If the demurrer to evidence is denied, trial must proceed and, thereafter, a judgment on the merits rendered. If the accused is convicted, he or she may then assail the adverse judgment, not the order denying demurrer to evidence.

It is true that we have the power of judicial review. This power, however, must be wielded delicately. Its exercise must be guided by a temperament of deference. Otherwise, the competence of trial courts will be frustrated. We will likewise open ourselves to the criticism that we use our power to supplant our own findings of fact with those of the Sandiganbayan.

The extraordinary power of certiorari granted under Article VIII, Section 1 of the Constitution allows the exercise of judicial review of other branches and constitutional organs. With respect to courts under our supervision, the use of certiorari is covered by our Rules.

Certainly, we cannot grant certiorari and annul the denial of the demurrer to evidence when we ourselves, through our Rules

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[1] *J.* Bernabe, Separate Opinion, p. 17.

[2] RULES OF COURT, Rule 119, Sec. 23 provides:

SEC. 23. *Demurrer to evidence*. — . . . .

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

of Court, prohibit the review or appeal of any denial of the demurrer to evidence.

The unique circumstances of this case provide us with the temptation of an inopportune, overzealous intervention by a superior court. We have the potential to frustrate the unique competence of specially designed public instrumentalities. In this case, it is the Sandiganbayan.[3] This can similarly entail the undermining of mechanisms for exacting public accountability. In this case, it is for the criminal prosecution of what is possibly the most severe offense that public officers may commit, and of charges that are raised against the highest official of the executive branch of government.

This Court's principal task is to preserve the rule of law. Animated by this purpose, we should exercise the better part of restraint, defer to the original jurisdiction of the constitutionally mandated "anti-graft court,"[4] and prudently bide for a more opportune time to involve ourselves with the factual and evidentiary intricacies of the charges against petitioners.

We should allow the Sandiganbayan to proceed with trial, weigh the evidence, and acquit or convict on the basis of its evaluation of evidence received over the course of several months. Only after final judgment and in the proper course of an appeal should we intervene, if warranted.

**I**

At the core of these criminal proceedings is the charge of conspiracy. Petitioners and their co-accused are charged with

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[3] CONST. (1973), Art. XIII, Sec. 5 provides:

SEC. 5. The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

[4] CONST., Art. XI, Sec. 4 provides:

SEC. 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.

"conniving, conspiring and confederating with one another . . . to amass, accumulate and/or acquire, directly or indirectly, ill-gotten wealth."[5]

This allegation of conspiracy is as pivotal to these proceedings as the basic requisites of the offense with which petitioners were charged.

Plunder is defined in Section 2 of Republic Act No. 7080,[6] as amended:

> ***Section 2. Definition of the Crime of Plunder; Penalties***. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

*Estrada v. Sandiganbayan*[7] has clarified the elements that must be established for a successful prosecution of this offense:

> Section 2 is sufficiently explicit in its description of the acts, conduct and conditions required or forbidden, and prescribes the elements of the crime with reasonable certainty and particularity. Thus —
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> 1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity

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[5] *Rollo* (G.R. No. 220598), p. 24, Petition.

[6] An Act Defining and Penalizing the Crime of Plunder (1991).

[7] 421 Phil. 290 (2001) [Per *J.* Bellosillo, *En Banc*].

or consanguinity, business associates, subordinates or other persons;

2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts: (a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; (b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer; (c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of Government owned or controlled corporations or their subsidiaries; (d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking; (e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or (f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines; and,

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least ₱50,000,000.00.[8]

The definition of plunder in Section 2 makes explicit reference to Section 1(d)[9] of Republic Act No. 7080 and the six (6) "means or similar schemes" enumerated in it. It is these means which

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[8] *Id.* at 343-344.

[9] Rep. Act No. 7080 (1991), Sec. 1 provides:

Section 1. Definition of Terms. — As used in this Act, the term —

. . . . . . . . .

d) "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies,

Section 2's second element describes as "overt *or* criminal acts." The statutory text's use of the disjunctive "or" indicates a distinction between "overt" acts and "criminal" acts.

It is a distinction critical to appreciating the nature of the predicate means or schemes enumerated in Section 1 (d). While some of these means or schemes may coincide with specific offenses (i.e., "criminal" acts) defined and penalized elsewhere in our statutes, it is not imperative that a person accused of plunder be also shown to have committed other specific criminal offenses by his or her predicate acts. That there be an overt showing of engaging in such means or schemes suffices.

The Information filed against petitioners and their co-accused properly alleged the elements of plunder.

First, it stated that petitioners were public officers. Petitioner Gloria Macapagal-Arroyo (Former President Arroyo) is Former President of the Republic, and petitioner Benigno B. Aguas (Aguas) was former Budget and Accounts Manager of PCSO.[10]

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nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[10] *Rollo* (G.R. No. 220598), p. 306, Information.

Second, it alleged that the accused, *in conspiracy* with each other, transferred a total amount of ₱365,997,915.00 from PCSO's 2008 to 2010 Confidential and Intelligence Fund (CIF) in PCSO's accounts to their control and possession.[11]

Third, it stated that this diversion or transfer of funds was accomplished through three (3) of the six (6) acts enumerated in Section 1(d) of Republic Act No. 7080:

(a) diverting, in several instances, funds from the operating budget of PCSO to its Confidential/Intelligence Fund that could be accessed and withdrawn at any time with minimal restriction, and converting, misusing, and/or illegally conveying or transferring the proceeds drawn from said fund in the aforementioned sum, also in several instances, to themselves, in the guise of fictitious expenditures, for their personal gain and benefit;

(b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/ Intelligence Fund from PCSO's accounts, and/or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures; and

(c) taking advantage of their respective official positions, authority, relationships, connections or influence, in several instances, to unjustly enrich themselves in the aforementioned sum, at the expense of, and to the damage and prejudice of the Filipino people and the Republic of the Philippines.[12]

As expressly stated in the Information, the charge against petitioners is grounded on the assertion that there was a conspiracy.[13] On this assertion, petitioners' claim that the Information, let alone the evidence presented, fails to substantiate the charged offense — as it allegedly fails to specify who among the accused amassed, accumulated, or acquired the amount of ₱365,997,915.00[14] — crumbles.

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[11] *Id.* at 306-307.

[12] *Id.* at 307.

[13] *Id.* at 306-307.

[14] *Id.* at 51-53, Petition.

By definition, plunder may be a collective act, just as well as it may be an individual act. Section 2 of Republic Act No. 7080 explicitly states that plunder may be committed "in connivance":

> ***Section 2. Definition of the Crime of Plunder; Penalties***. — Any public officer who, by himself or *in connivance* with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons[.] (Emphasis supplied)

In stating that plunder may be committed collectively, Section 2 does not require a central actor who animates the actions of others or to whom the proceeds of plunder are funneled.

It does, however, speak of "[a]ny public officer."[15] This reference is crucial to the determination of plunder as essentially an offense committed by a public officer. Plunder is, therefore, akin to the offenses falling under Title VII of the Revised Penal Code. Likewise, this reference highlights the act of plundering as essentially one that is accomplished by taking advantage of public office or other such instrumentalities.

Contrary to what the *ponencia* postulates, there is no need for a "main plunderer."[16] Section 2 does not require plunder to be centralized, whether in terms of its planning and execution, or in terms of its benefits. All it requires is for the offenders to act out of a common design to amass, accumulate, or acquire ill-gotten wealth, such that the aggregate amount obtained is at least ₱50,000,000.00. Section 1(d) of Republic Act No. 7080, in defining "ill-gotten," no longer even speaks specifically of a "public officer." In identifying the possessor of ill-gotten wealth, Section 1(d) merely refers to "any person":

> ***Section 1. Definition of Terms***. — As used in this Act, the term —
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> . . . . . . . . .
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> d) "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of *any person*[.] (Emphasis supplied)

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[15] Rep. Act No. 7080 (1991), Sec. 2.

[16] *Ponencia*, p. 34.

With the allegation of conspiracy as its crux, each of the accused was charged as a principal. In a conspiracy:

> the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual participation of each conspirator in the commission of the crime becomes immaterial.[17]

From an evidentiary perspective, to be held liable as a co-principal, there must be a showing of an

> overt act in furtherance of the conspiracy, either by actively participating in the actual commission of the crime, or by lending moral assistance to his co-conspirators by being present at the scene of the crime, or by exerting moral ascendancy over the rest of the conspirators as to move them to executing the conspiracy.[18]

Direct proof, however, is not imperative:

> Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though

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[17] *People v. Medina*, 354 Phil. 447, 460 (1998) [Per *J*. Regalado, *En Banc*], citing *People v. Paredes*, 133 Phil. 633, 660 (1968) [Per *J*. Angeles, *En Banc*]; *Valdez v. People*, 255 Phil. 156, 160-161 (1986) [Per *J*. Cortes, *En Banc*]; *People v. De la Cruz*, 262 Phil. 838, 856 (1990) [Per *J*. Melencio-Herrera, Second Division]; *People v. Camaddo*, G.R. No. 97934, January 18, 1993, 217 SCRA 162, 167 [Per *J*. Bidin, Third Division].

[18] *People v. Peralta*, 134 Phil. 703, 723 (1968) [*Per Curiam, En Banc*].

no actual meeting among them to concert means is proved. Thus, the proof of conspiracy, which is essentially hatched under cover and out of view of others than those directly concerned, is perhaps most frequently made by evidence of a chain of circumstances only.[19] (Citations omitted)

**II**

This is not an appeal from definitive findings of fact that have resulted in the conviction or acquittal of the accused. It is only a Petition for Certiorari seeking to supplant the discretion of the Sandiganbayan to hear all the evidence.

Section 4 of Republic Act No. 7080 provides:

> ***Section 4. Rule of Evidence.*** — For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, *it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.* (Emphasis supplied)

The sufficiency of showing "a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy" is particularly crucial. It emphasizes how absence of direct proof of every conspirator's awareness of, as well as participation and assent in, every single phase of the overall conspiratorial design is not fatal to a group of conspirators' prosecution and conviction for plunder.

Section 4 was correctly applied in this case.

It would be inappropriate to launch a full-scale evaluation of the evidence, lest this Court — an appellate court, vis-à-vis the Sandiganbayan's original jurisdiction over plunder — be invited to indulge in an exercise which is not only premature, but also one which may entirely undermine the Sandiganbayan's competence. Nevertheless, even through a prima facie review,

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[19] *Alvizo v. Sandiganbayan*, 454 Phil. 34, 106 (2003) [Per *J.* Austria-Martinez, *En Banc*].

the prosecution adduced evidence of a combination or series of events that appeared to be means in a coherent scheme to effect a design to amass, accumulate, or acquire ill-gotten wealth. Without meaning to make conclusions on the guilt of the accused, specifically of petitioners, these pieces of evidence beg, at the very least, to be addressed during trial. Thus, there was no grave abuse of discretion on the part of the Sandiganbayan.

The Resolution of the Sandiganbayan, with respect to Former President Arroyo, deserves to be reproduced:

Pertinent Dates & Facts

***2008***

On April 2, 2008, accused Uriarte asked accused Arroyo for additional Confidential and Intelligence Funds in the amount of ₱25 million. This was approved.

On May 14, 2008, the Board issued Resolution No. 305 adopting and approving the PCSO's proposed Corporate Operating Budget (COB). In the COB was an allocation of ₱28 million as PCSO's CIF for 2008.

On August 13, 2008, Uriarte again asked Arroyo for additional CIF in the amount of ₱50 million. This was also approved.

***2009***

On February 18, 2009, the Board confirmed the additional CIF granted by Arroyo and designated Uriarte as Special Disbursing Officer through Resolution No. 217.

On May 11, 2009, Plaras issued Credit Advice Nos. 2009-05-0216-C and 2009-05-0217-C, in relation to the cash advances drawn from PCSO's CIF for 2008 in the amount of ₱29,700,000.00 and ₱55,152,000.00.

On March 31, 2009, the Board approved the 2009 PCSO COB. The allocation in the COB for the CIF was increased to ₱60 million.

On January 19, 2009, Uriarte asked Arroyo for an additional CIF in the amount of ₱50 million. This was approved.

On April 27, 2009, Uriarte asked Arroyo for an additional CIF in the amount of ₱10 million. This was approved.

On July 2, 2009, Uriarte asked Arroyo for an additional CIF in the amount of ₱10 million. This was approved.

On October 19, 2009, Uriarte asked Arroyo for an additional CIF in the amount of ₱20 million. This was approved. On the same date, Valencia wrote to Villar to liquidate the CIF under the Office of the Chairman in the amount of ₱2,498,300.00. Enclosed in the said letter was the Certification of the Chairman, the original copy of the cash disbursement and liquidation vouchers, Board Resolution No. 469, a copy of the Maintenance and Other Operating Expenses Budget and the Matrix of Expenses incurred from the fund.

On December 9, 2009, the Board confirmed through Resolution No. 2356 the additional CIF approved by Arroyo and designated Uriarte as Special Disbursing Officer.

***2010***

On January 4, 2010, Uriarte asked Arroyo for an additional CIF in the amount of ₱150 million. This was approved.

On January 6, the Board issued Resolution No. 029 confirming the additional CIF and designated Uriarte as Special Disbursing Officer.

On March 10, 2010 the Board approved the proposed PCSO COB for 2010. The allocation of ₱60 million was made for the CIF.

On July 14, 2010, Plaras issued Credit Advice No. 2010-07-0413-C in relation to cash advances in 2009 from the CIF amounting to ₱116,386,800.00.

On July 15, 2010, Plaras asked Uriarte to submit various documents to support the requested liquidation.

On July 19, 2010, Uriarte submitted an accomplishment report, a single-page matrix of intelligence accomplishments prepared by Aguas and a two-page report on the utilization of the 2010 CIF.

On January 13, 2011, Plaras issued Credit Advice No. 2011-01-008-C in relation to the cash advances drawn by accused Uriarte and Valencia in 2010.

**DISCUSSION**

Demurrer to evidence is an objection by one of the parties in an action, to the effect that the evidence which his adversary produced is insufficient in point of law, whether true or not, to make out a case or sustain the issue. The party demurring challenges the sufficiency

of the whole evidence to sustain a verdict. The court then ascertains whether there is a competent or sufficient evidence to sustain the indictment or to support a verdict of guilt.

Sufficient evidence for purposes of frustrating a demurrer thereto is such evidence in character, weight or amount as will legally justify the judicial or official action demanded to accord to circumstances. To be considered sufficient therefore, the evidence must prove (a) the commission of the crime, and (b) the precise degree of participation therein by the accused.

The demurrers of each of the accused should thus be measured and evaluated in accordance with the High Court's pronouncement in the ***Gutib*** case. Focus must therefore be made as to whether the Prosecution's evidence sufficiently established the commission of the crime of plunder and the degree of participation of each of the accused.

**A. Demurrer filed by Arroyo and Aguas:**

It must be remembered that in Our November 5, 2013 Resolution, We found strong evidence of guilt against Arroyo and Aguas, only as to the second predicate act charged in the Information, which reads:

> (b) raiding the public treasury by withdrawing and receiving, in several instances, the above-mentioned amount from the Confidential/Intelligence Fund from PCSO's accounts, and/or unlawfully transferring or conveying the same into their possession and control through irregularly issued disbursement vouchers and fictitious expenditures.

In the November 5, 2013 Resolution, We said:

> It should be noted that in both R.A. No. 7080 and the PCGG rules, the enumeration of the possible predicate acts in the commission of plunder did not associate or require the concept of personal gain/benefit or unjust enrichment with respect to raids on the public treasury, as a means to commit plunder. It would, therefore, appear that a "raid on the public treasury" is consummated where all the acts necessary for its execution and accomplishment are present. Thus a "raid on the public treasury" can be said to have been achieved thru the pillaging or looting of public coffers either through misuse, misappropriation or conversion, without need of establishing

gain or profit to the raider. Otherwise stated, once a "raider" gets material possession of a government asset through improper means and has free disposal of the same, the raid or pillage is completed.

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Clearly, the improper acquisition and illegal use of CIF funds, which is obviously a government asset, will amount to a raid on the public treasury, and therefore fall into the category of ill-gotten wealth.

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x x x It is not disputed that Uriarte asked for and was granted authority by Arroyo to use additional CIF funds during the period 2008-2010. Uriarte was able accumulate during that period CIF funds in the total amount of ₱352,681,646. This was through a series of withdrawals as cash advances of the CIF funds from the PCSO coffers, as evidenced by the disbursement vouchers and checks issued and encashed by her, through her authorized representative.

These flagrant violations of the rules on the use of CIF funds evidently characterize the series of withdrawals by and releases to Uriarte as "'raids" on the PCSO coffers, which is part of the public treasury. These were, in every sense, "pillage," as Uriarte looted government funds and appears to have not been able to account for it. The monies came into her possession and, admittedly, she disbursed it for purposes other than what these were intended for, thus, amounting to "misuse" of the same. Therefore, the additional CIF funds are ill-gotten, as defined by R.A. 7080, the PCGG rules, and *Republic v. Sandiganbayan*. The encashment of the checks, which named her as the "payee," gave Uriarte material possession of the CIF funds which she disposed of at will.

As to the determination whether the threshold amount of ₱50 million was met by the prosecution's evidence, the Court believes this to have been established. Even if the computation is limited only to the cash advances/releases made by accused Uriarte alone AFTER Arroyo had approved her requests and the PCSO Board approved CIF budget and the "regular" ₱5 million CIF budget accorded to the PCSO Chairman and Vice Chairman are NOT taken into account, still the total cash

advances through accused Uriarte's series of withdrawals will total ₱189,681,646. This amount surpasses the ₱50 million threshold.

The evidence shows that for the year 2010 alone, Uriarte asked for ₱150 million additional CIF funds, and Arroyo granted such request and authorized its use. From January 8, 2010 up to June 18, 2010, Uriarte made a series of eleven (11) cash advances in the total amount of ₱138,223,490. According to Uriarte's testimony before the Senate, the main purpose for these cash advances was for the "roll-out" of the small town lottery program. However, the accomplishment report submitted by Aguas shows that ₱137,500,000 was spent on non-related PCSO activities, such as "bomb threat, kidnapping, terrorism and bilateral and security relations." All the cash advances made by Uriarte in 2010 were made in violation of LOI 1282, and COA Circulars 2003-002 and 92-385. These were thus improper use of the additional CIF funds amounting to raids on the PCSO coffers and were ill-gotten because Uriarte had encashed the checks and came into possession of the monies, which she had complete freedom to dispose of, but was not able to properly account for.

These findings of the Court clearly point out the commission by Uriarte of the crime of Plunder under the second predicate act charged in the Information. As to Arroyo's participation, the Court stated in its November 5, 2013 Resolution that:

The evidence shows that Arroyo approved not only Uriarte's request for additional CIF funds in 2008-2010, but also authorized the latter to use such funds. Arroyo's "OK" notation and signature on Uriarte's letter-requests signified unqualified approval of Uriarte's request to use the additional CIF funds because the last paragraph of Uriarte's requests uniformly ended with this phrase: "With the use of intelligence fund, PCSO can protect its image and integrity of its operations."

The letter-request of Uriarte in 2010 was more explicit because it categorically asked for: "The approval on the use of the fifty percent of the PR Fund as PCSO Intelligence Fund will greatly help PCSO in the disbursement of funds to immediately address urgent issues."

Arroyo cannot, therefore, successfully argue that what she approved were only the request for the grant or allocation of

additional CIF funds, because Arroyo's "OK" notation was unqualified and, therefore, covered also the request to use such funds, through releases of the same in favor of Uriarte.

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As to Aguas's involvement, Our June 6, 2013 Resolution said:

In all of the disbursement vouchers covering the case advances/releases to Uriarte of the CIF funds, Aguas certified that:

CERTIFIED: Adequate available funds/budgetary allotment in the amount of ₱____________________; expenditure properly certified; supported by documents marked (X) per checklist and back hereof; account codes proper; previous cash advance liquidated/accounted for.

These certifications, after close scrutiny, were not true because: 1.) there were no documents which lent support to the cash advances on a per project basis. The particulars of payment simply read: "To draw cash advance from the CIF Fund of the Office of the Vice-Chairman and General Manager." No particular purpose or project was specified contrary to the requirement under COA Circular 2003-002 that cash advances must be on a per project basis. Without specifics on the project covered by each cash advance, Aguas could not certify that supporting documents existed simply because he would not know what project was being funded by the cash advances; and 2.) There were no previous liquidations made of prior cash advances when Aguas made the certifications. COA Circular 2003-002 required that cash advances be liquidated within one (1) month from the date the purpose of the cash advance was accomplished. If the completion of the projects mentioned were for more than one month, a monthly progress liquidation report was necessary. In the case of Uriarte's cash advances certified to by Aguas, the liquidation made was wholesale, i.e., these were done on a semi-annual basis without a monthly liquidation or at least a monthly liquidation progress report. How then could Aguas correctly certify that previous liquidations were accounted for? Aguas's certification also violated Sec. 89 of P.D. 1445 which states:

Limitations on cash advance. No cash advance shall be given unless for a legally authorized specific purpose. A cash advance

> shall be reported on and liquidated as soon as the purpose for which it was given has been served. No additional cash advance shall be allowed to any official or employee unless the previous cash advance given to him is first settled or a proper accounting thereof is made.
>
> There is a great presumption of guilt against Aguas, as his action aided and abetted Uriarte's being able to draw these irregular CIF funds in contravention of the rules on CIF funds. Without Aguas's certification, the disbursement vouchers could not have been processed for payment. Accordingly, the certification that there were supporting documents and prior liquidation paved the way for Uriarte to acquire ill-gotten wealth by raiding the public coffers of the PCSO.
>
> By just taking cognizance of the series and number of cash advances and the staggering amounts involved, Aguas should have been alerted that something was greatly amiss and that Uriarte was up to something. If Aguas was not into the scheme, it would have been easy for him to refuse to sign the certification, but he did not. The conspiracy "gravamen" is therefore, present in the case of Aguas. Moreover, Aguas's attempt to cover-up Uriarte's misuse of these CIF funds in his accomplishment report only contributed to unmasking the actual activities for which these funds were utilized. Aguas's accomplishment report, which was conformed to by Uriarte, made it self-evident that the bulk of the CIF funds in 2009 and 2010 were allegedly spent for non-PCSO related activities, e.g., bomb threats, kidnapping, terrorism, and others.

With the **additional evidence** presented by the Prosecution **after** the bail hearings, the question now before the Court is whether such evidence elevated the quantum and weight of the evidence against the accused from strong evidence to sufficient evidence to convict, thereby justifying denial of their demurrers. Otherwise stated, was the "presumption great" finding in the bail hearings against Arroyo and Aguas further buttressed by the additional evidence presented by the prosecution or was diluted by the same?

The Court believes that there is sufficient evidence that Uriarte accumulated more than ₱50 million of CIF funds in violation of COA circulars 92-385 and 2003-02, and LOI 1282, thus characterizing such as ill-gotten wealth. Uriarte used Arroyo's approval to illegally accumulate these CIF funds which she encashed during the period

2008-2010. Uriarte utilized Arroyo's approval to secure PCSO Board confirmation of such additional CIF funds and to "liquidate" the same resulting in the questionable credit advices issued by accused Plaras. These were simply consummated raids on public treasury.

In an attempt to explain and justify the use of these CIF funds, Uriarte together with Aguas, certified that these were utilized for the following purposes:

a) Fraud and threat that affect integrity of operation.
b) Bomb threat, kidnapping, destabilization and terrorism.
c) Bilateral and security relation.

According to Uriarte and Aguas, these purposes were to be accomplished through "cooperation" of law enforcers which include the military, police and the NBI. The second and third purposes were never mentioned in Uriarte's letter-requests for additional CIF funds addressed to Arroyo. Aguas, on the other hand, issued an accomplishment report addressed to the COA, saying that the "Office of the President" required funding from the CIF funds of the PCSO to achieve the second and third purposes abovementioned. For 2009 and 2010, the funds allegedly used for such purposes amounted to ₱244,500,00.00.

Such gargantuan amounts should have been covered, at the very least, by some documentation covering fund transfers or agreements with the military, police or the NBI, notwithstanding that these involved CIF funds. However, all the intelligence chiefs of the Army, Navy, Air Force, the PNP and the NBI, testified that for the period 2008-2010, their records do not show any PCSO-related operations involving any of the purposes mentioned by Uriarte and Aguas in their matrix of accomplishments. Neither were there any memoranda of agreements or any other documentation covering fund transfers or requests for assistance or surveillance related to said purposes. While the defense counsels tried to question the credibility of the intelligence chiefs by drawing our admissions from them that their records were not 100% complete, it seems highly incredulous that not a single document or record exists to sustain Uriarte's and Aguas's report that CIF funds were used for such purposes. Uriarte, who was obliged to keep duplicate copies of her supporting documents for the liquidation of her CIF funds, was unable to present such duplicate copies when she was investigated by the Senate and the Ombudsman. As it stands, the actual use of these CIF funds is still unexplained.

Arroyo and Aguas's degree of participation as co-conspirators of Uriarte are established by sufficient evidence.

In ***Jose "Jinggoy" Estrada v. Sandiganbayan***, the gravamen of **conspiracy** in plunder cases was discussed by the Supreme Court, as follows:

> There is no denying the fact that the "plunder of an entire nation resulting in material damage to the national economy" is made up of a complex and manifold network of crimes. In the crime of plunder, therefore, different parties may be united by a common purpose. In the case at bar, the different accused and their different criminal acts have a commonality — to help the former President amass, accumulate or acquire ill-gotten. Sub-paragraphs (a) to (d) in the Amended Information alleged the different participation of each accused in the conspiracy. <u>The gravamen of the conspiracy charge, therefore, is not that each accused agreed to receive protection money from illegal gambling, that each misappropriated a portion of the tobacco excise tax, that each accused order the GSIS and SSS to purchase shares of Belle Corporation and receive commissions from such sale, nor that each unjustly enriched himself from commissions, gifts and kickbacks; rather, it is that each of them, by their individual acts, agreed to participate, directly or indirectly, in the amassing, accumulation and acquisition of ill-gotten wealth of and/or for former President Estrada.</u>

It seems clear that in a conspiracy to commit plunder, the essence or material point is not the actual receipt of monies or unjust enrichment by each conspirator, but that a conspirator had participated in the accumulation of ill-gotten wealth, directly or indirectly.

In Our February 19, 2014 Resolution, We stated:

> The overt act, therefore, which establishes accused Macapagal-Arroyo's conspiracy with accused Uriarte is her unqualified "OK" notation on the letter-requests. All the badges of irregularities were there for accused Macapagal-Arroyo to see, but still she approved the letter-requests. Consider the following: accused Macapagal-Arroyo approved accused Uriarte's requests despite the absence of full details on the specific purpose for which the additional CIF were to be spent for. There was also no concrete explanation of the circumstances which gave rise to the necessity for the expenditures, as required by LOI 1282. Accused Macapagal-Arroyo did not question accused Uriarte's repetitive and simplistic basis for the requests, as she readily approved accused Uriarte's requests without any qualification

> or condition. Accused Macapagal-Arroyo apparently never questioned accused Uriarte why the latter was asking for additional CIF funds. All of accused Uriarte's requests did not state any balance or left-over CIF funds which PCSO still had before accused Uriarte made the requests. As President of the Republic, accused Macapagal-Arroyo was expected to be aware of the rules governing the use of CIF. Considering that accused Macapagal-Arroyo's approval also covered the use and release of these funds, it was incumbent upon her to make sure that accused Uriarte followed and complied with the rules set forth by the COA and LOI 1282.

The findings on the conspiratorial acts of Arroyo and Aguas have been strengthened by the testimonies and certifications presented by the intelligence officers. Even granting, *arguendo*, that their testimonies should not be accorded great weight, the fact that Uriarte and Aguas certified that these CIF funds were used for purposes other than PCSO related activities, sufficiently established the conclusion that CIF monies were diverted to fund activities of the Office of the President. Therefore, Arroyo and Aguas's demurrers must be denied.[20] (Emphasis in the original, citations omitted)

The following observations from the evidence bears repeating for emphasis:

First, evidence was adduced to show that there was co-mingling of PCSO's Prize Fund, Charity Fund, and Operating Fund. In the Annual Audit Report of PCSO for 2007, the Commission on Audit already found this practice of having a "combo account" questionable.[21] The prosecution further alleged that this co-mingling was "to ensure that there is always a readily accessible fund from which to draw CIF money."[22]

Section 6 of PCSO's Charter, Republic Act No. 1169,[23] as amended by Batas Pambansa Blg. 42 and Presidential Decree

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[20] *Rollo* (G.R. No. 220598), pp. 157-165.

[21] *Rollo* (G.R. No. 220598), p. 3416, Comment filed by the Ombudsman in G.R. No. 220953; Sandiganbayan records, Exhibit "E" for the Prosecution.

[22] *Id.* at 1644, Comment filed by the Ombudsman in G.R. No. 220598.

[23] Otherwise known as "An Act Providing for Charity Sweepstakes, Horse Races, and Lotteries".

No. 1157, stipulates how PCSO's net receipts (from the sale of tickets) shall be allocated. It specifies three separate funds — the Prize Fund, the Charity Fund, and funds for the operating expenses (or operating fund) — and defines the apportionment of gross receipts:

SECTION 6. Allocation of Net Receipts. — From the gross receipts from the sale of sweepstakes tickets, whether for sweepstakes races, lotteries, or similar activities, shall be deducted the printing cost of such tickets, which in no case shall exceed two percent of such gross receipts to arrive at the net receipts. The net receipts shall be allocated as follows:

A. Fifty-five percent (55%) shall be set aside as a prize fund for the payment of prizes, including those for the owners, jockeys of running horses, and sellers of winning tickets.

Prizes not claimed by the public within one year from date of draw shall be considered forfeited, and shall form part of the charity fund for disposition as stated below.

B. Thirty percent (30%) shall be set aside as contributions to the charity fund from which the Board of Directors, in consultation with the Ministry of Human Settlement on identified priority programs, needs, and requirements in specific communities and with approval of the Office of the President (Prime Minister), shall make payments or grants for health programs, including the expansion of existing ones, medical assistance and services and/or charities of national character, such as the Philippine National Red Cross, under such policies and subject to such rules and regulations as the Board may from time establish and promulgate. The Board may apply part of the contributions to the charity fund to approved investments of the Office pursuant to Section 1 (B) hereof, but in no case shall such application to investments exceed ten percent (10%) of the net receipts from the sale of sweepstakes tickets in any given year.

Any property acquired by an institution or organization with funds given to it under this Act shall not be sold or otherwise disposed of without the approval of the Office of the President (Prime Minister), and that in the event of its dissolution all such property shall be transferred to and shall automatically become the property of the Philippine Government.

C. Fifteen (15%) percent shall be set aside as contributions to the operating expenses and capital expenditures of the Office.

D. All balances of any funds in the Philippine Charity Sweepstakes Office shall revert to and form part of the charity fund provided for in paragraph (B), and shall be subject to disposition as above stated. The disbursements of the allocation herein authorized shall be subject to the usual auditing rules and regulations.

Co-mingling PCSO's funds into a single account runs against the plain text of PCSO's Charter. Accordingly, in 2007, the Commission on Audit's Annual Audit Report of PCSO found the practice of having a "combo account" questionable.[24] In this same Report, the Commission on Audit further observed that "said practice will not ensure the use of the fund for its purpose and will not account for the available balance of each fund as of a specified date."[25] Thus, it recommended that there be a corresponding transfer of funds to the specific bank accounts created for the different funds of PCSO:[26]

7. No corresponding transfer of cash was made to prize and charity funds whenever receivables were collected.

. . . . . . . . .

7.3 Management commented that it is maintaining a combo (mother) account for the three funds where drawings or transfer of funds are being made as the need arises. Thus, there is no prejudice or danger in financing the charity mandate of the office.

7.4 *In our opinion, said practice will not ensure the use of fund for its purpose and will not account for the available balance of each fund as of a specific date.*

7.5 In order to avoid juggling/using of one fund to/for another fund, we have recommended that all collections be deposited in

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[24] *Rollo* (G.R. No. 220598), p. 3416, Comment filed by the Ombudsman in G.R. No. 220953; Sandiganbayan records, Exhibit "E" for the Prosecution.

[25] *Id.* at 1671, Annex 1 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "E" for the Prosecution.

[26] *Id.*

on *Cash in bank* general account. *Upon computation of the allocation of net receipts to the three funds, a corresponding transfer of funds to the specific bank accounts created for the prize, charity and operating funds be effected.*[27] (Emphasis supplied)

Second, the prosecution demonstrated — through Former President Arroyo's handwritten notations — that she personally approved PCSO General Manager Rosario C. Uriarte's (Uriarte) "requests for the allocation, release and use of additional [Confidential and Intelligence Fund.]"[28] ***The prosecution stressed that these approvals were given despite Uriarte's generic one-page requests, which ostensibly violated Letter of Instruction No. 1282's requirement that, for intelligence funds to be released, there must be a specification of: (1) specific purposes for which the funds shall be used; (2) circumstances that make the expense necessary; and (3) the disbursement's particular aims. The prosecution further emphasized that Former President Arroyo's personal approvals were necessary, as Commission on Audit Circular No. 92-385's stipulates that confidential and intelligence funds may only be released upon approval of the President of the Philippines.***[29] Unrefuted, these approvals are indicative of Former President Arroyo's indispensability in the scheme to plunder.

Letter of Instruction No. 1282 states:

Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the *specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished*. (Emphasis supplied)

Uriarte's April 2, 2008 request stated:

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario

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[27] *Id.*

[28] *Id.* at 1644.

[29] *Id.* at 1642, Comment filed by the Ombudsman in G.R. No. 220598.

C. Uriarte be given additional intelligence fund in the amount of ₱25 Million Pesos for the year 2008.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of ₱7.32B registered in 2000, the office has generated actual sales of ₱18.69B in 2007.

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO-Not for Sale*";
2. Unwarranted or unofficial use of ambulance by beneficiary-donees;
3. Unauthorized expenditures of endowment fund for charity patients and organizations;
4. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;
5. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
6. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[30]

The wording and construction of the August 13, 2008 request is markedly similar:

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[30] *Id.* at 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution.

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of ₱50 Million Pesos for the year 2008.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of ₱7.32B registered in 2000, the office has generated actual sales of ₱18.69B in 2007.

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO-Not for Sale*";
2. Unauthorized expenditures of endowment fund for charity patients and organizations;
3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;
4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[31]

The same is true of the January 19, 2009 request:

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of ₱50 Million Pesos for the year 2009.

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[31] *Id.* at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of ₱7.32B registered in 2000, the office has generated actual sales of ₱21B in 2008.

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Unwarranted or unofficial use of ambulance by beneficiary-donees;
2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets.
3. Conduct of illegal gambling games (jueteng) under the guise of Small Town Lottery;
4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[32]

Subsequent requests made on April 27, 2009 and July 2, 2009, respectively, also merely followed the formula employed in previous requests:

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of ₱10 Million Pesos for the year 2009.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial

[32] *Id.* at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution.

improvement in our sales performance. From the sales of ₱7.32 B registered in 2000, the office has generated actual sales of ₱23 B in 2008.

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

1. Unwarranted or unofficial use of ambulance by beneficiary-donees;
2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets.
3. Conduct of illegal gambling games (jueteng) under the guise of Small Town Lottery;
4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[33]

. . . . . . . . .

The Philippine Charity Sweepstakes Office (PCSO) respectfully requests that Office of the Vice Chairman and General Manager Rosario C. Uriarte be given additional intelligence fund in the amount of ₱10 Million Pesos for the year 2009.

Since you took over the administration in 2001, we were able to continuously increase the funds generated for charity due to substantial improvement in our sales performance. From the sales of ₱7.32 B registered in 2000, the office has generated actual sales of ₱23 B in 2008.

In dispensing its mandate, PCSO has been constantly encountering a number of fraudulent schemes and nefarious activities on a continuing basis which affect the integrity of our operations, to wit:

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[33] *Id.* at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution.

1. Unwarranted or unofficial use of ambulance by beneficiary-donees;

2. Lotto and Sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets.

3. Conduct of illegal gambling games (jueteng) under the guise of Small Town Lottery;

4. Other fraudulent schemes and activities which put the PCSO in bad light.

PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities. With the use of intelligence fund, PCSO can protect its image and integrity of its operations.

(sgd.)
ROSARIO C. URIARTE[34]

The request made on January 24, 2010 had some additions, but was still noticeably similar:

The Philippine Charity Sweepstakes Office (PCSO) has been conducting the experimental test run for the Small Town Lottery (STL) Project since February 2006. During the last semester of 2009, the PCSO Board has started to map out the regularization of the STL in 2010.

Its regularization will encounter the illegal numbers game but it will entail massive monitoring and policing using confidential agents in the area to ensure that all stakeholders are consulted in the process.

STL regularization will also require the acceptance of the public. Hence, public awareness campaign will be conducted nationwide. In the process, we will need confidential operations, to wit:

1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO-Not for Sale*";

2. Unauthorized expenditures of endowment fund for *charity patients and organizations*;

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[34] *Id.* at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution.

3. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;

4. Other fraudulent schemes and activities which put the PCSO in bad light.

In order to save on PCSO operating funds, we suggest that the General Manager's Office be given at most, twenty percent (20%) of the Public Relations Fund or a minimum of 150 Million Pesos, to be used as intelligence/confidential fund. PCSO spent 760 Million pesos for PR in 2009.

The approval on the use of the fifty percent of the PR fund as PCSO Intelligence Fund will greatly help PCSO in the disbursement of funds to immediately address urgent issues. PCSO will no longer need to seek approval for additional intelligence fund without first utilizing the amount allocated from the PR fund.

For Her Excellency's approval.

[sgd.]
ROSARIO C. URIARTE[35]

These similarly worded requests relied on the same justification; that is, "a number of fraudulent schemes and nefarious activities . . . which affect the integrity of [PCSO's] operations[.]" The different requests used various permutations of any of the following seven (7) such schemes and activities:

1. Donated medicines sometimes end up in drug stores for sale even if they were labeled "*Donated by PCSO-Not, for Sale*";

2. Unwarranted or unofficial use of ambulances by beneficiary-donees;

3. Unauthorized expenditures of endowment fund for charity patients and organizations;

4. Lotto and sweepstakes scams victimizing innocent people of winning the jackpot and selling tampered tickets as winning tickets;

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[35] *Id.* at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

5. Fixers for the different programs of PCSO such as Ambulance Donation Project, Endowment Fund Program and Individual Medical Assistance Program;

6. Conduct of illegal gambling games (jueteng) under [the] guise of Small Town Lottery; and

7. Other fraudulent schemes and activities which put PCSO in [a] bad light.[36]

Citing "a number of fraudulent schemes and nefarious activities . . . which affect the integrity of [PCSO's] operations"[37] hardly seems to be sufficient compliance with Letter of Instruction No. 1282. This Letter of Instruction requires a request's specification of three (3) things: first, the specific purposes for which the funds shall be used; second, circumstances that make the expense necessary; and third, the disbursement's particular aims.[38] Citing "fraudulent schemes and nefarious activities" may satisfy the requirement of stating the circumstances that make the expense necessary. It may also imply that the disbursement's overarching (though not its

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[36] *Id.* at 1591-1611, Comment filed by the Ombudsman in G.R. No. 220598.

[37] See *rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution;

*Id.* at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;
*Id.* at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution;
*Id.* at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution;
*Id.* at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution; and
*Id.* at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

[38] L.O.I. No. 1282 (1983), par. 2 provides: "Effective immediately, all requests for the allocation or release of intelligence funds shall indicate in full detail the specific purposes for which said funds shall be spent and shall explain the circumstances giving rise to the necessity for the expenditure and the particular aims to be accomplished."

particular) aim is to curtail such schemes and activities. Still, *merely citing these fails to account for the first requirement of the specific purposes for which the funds shall be used*. There was no mention of specific projects, operations, or activities "for which said funds shall be spent."[39]

The requests likewise failed to account for why additional amounts — which ballooned to ₱150,000,000.00, as shown in the January 4, 2010 request — were necessary. Instead, these requests merely relied on the repeated refrain of how "PCSO at all instances must be on guard and have ready available resources to conduct surveillance, discreet investigations, purchase of information and other related activities."[40] These requests also relied on the claim that "[w]ith the use of intelligence fund, PCSO can protect its image and integrity."[41]

Commission on Audit Circular No. 92-385[42] emphasizes that funds provided for in the General Appropriations Act, which are released for intelligence operations, must be specifically designated as such in the General Appropriations Act. It further identifies the President of the Philippines as the sole approving authority for the release of confidential and intelligence funds:

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[39] L.O.I. No. 1282 (1983).

[40] See *rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution;
*Id.* at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;
*Id.* at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution;
*Id.* at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution;
*Id.* at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution; and
*Id.* at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

[41] *Id.*

[42] In re: Restatement with Amendments of COA Issuances on the Audit of Intelligence and/or Confidential Funds (1992).

WHEREAS, no amount appropriated in the General Appropriations Act shall be released or disbursed for confidential and intelligence activities unless specifically identified and authorized as such intelligence or confidential fund in said Act;

WHEREAS, intelligence and confidential funds provided for in the budgets of departments, bureaus, offices or agencies of the national government, including amounts from savings authorized by Special Provisions to be used for intelligence and counter intelligence activities, shall be released only upon approval of the President of the Philippines.

Similarly, Commission on Audit Circular 03-002[43] includes the "Approval of the President of the Release of the Confidential and Intelligence Fund"[44] as among the documentary requirements for the audit and liquidation of confidential and intelligence funds.

The prosecution presented evidence to show that Former President Arroyo personally approved the release of additional CIF to the PCSO on several occasions from 2008 to 2010. This she did by handwriting the notation "OK, GMA."[45] In addition,

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[43] In re: Audit and Liquidation of Confidential and Intelligence Funds for National and Corporate Sectors (2003).

[44] The following must be submitted whenever a new Disbursing Officer is appointed.

A. *Certified xerox copy of the designation of Special Disbursing Officers.*

B. Certified xerox copy of their fidelity bonds.

C. Specimen signature of officials authorized to sign cash advances and liquidation vouchers. (Emphasis supplied)

[45] See *Rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution.

*Id.* at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;

*Id.* at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution;

*Id.* at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution;

*Id.* at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution.

the prosecution showed that these releases were in excess of amounts initially allocated as such CIF and were facilitated despite PCSO's having had to operate under a deficit.

Prosecution witness, Atty. Aleta Tolentino (Atty. Tolentino), Head of the Audit Committee of PCSO, emphasized that the approval and disbursements of the CIF were irregular as they did not comply with Commission on Audit Circular 92-385's requirement of there being an amount "specifically identified and authorized as such intelligence or confidential fund" before disbursements may be made for confidential and intelligence activities.

Atty. Tolentino noted that, as a consequence of Commission on Audit Circular 03-002, a government-owned and controlled corporation must first have an allocation for the CIF specified in its Corporate Operating Budget or "taken from savings authorized by special provisions."

In 2008, only ₱28,000,000.00 was allocated as CIF.[46] Nevertheless, Former President Arroyo approved the requests of Uriarte — separately, on April 2, 2008 and on August 13, 2008 — to increase the budget allotted for PCSO Confidential and Intelligence Expenses, with an amount totaling ₱75,000,000.00.[47] For this year, an amount totaling ₱86,555,060.00 was disbursed.[48]

In 2009, the original budget of ₱60,000,000.00[49] was increased by a total of ₱90,000,000.00, through the approval of separate

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*Id.* at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

[46] *Id.* at 1829, Annex 4 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "K" for the Prosecution.

[47] *Id.* at 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution; *Id.* at 1832, Annex 6 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "Q" for the Prosecution;

[48] *Ponencia*, p. 7.

[49] *Id.* at 1952, Annex 22 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "L" for the Prosecution.

requests made by Uriarte to increase the budget by ₱50,000,000.00 on January 19, 2009;[50] ₱10,000,000.00 on April 27, 2009;[51] and ₱10,000,000.00 on July 2, 2009.[52] A letter[53] dated October 19, 2009 issued by former Executive Secretary Eduardo Ermita showed that Former President Arroyo also approved the release of additional CIF amounting to ₱20,000,000.00.[54] Total 2009 disbursements amounted to ₱138,420,875.00.[55]

In 2010, ₱141,021,980.00 was disbursed as of June 2010,[56] even as the CIF allocation for the entire year was only ₱60,000,000.00.[57] This comes at the heels of an increase of ₱150,000,000.00,[58] again through Former President Arroyo's approval of the request made by Uriarte.

It was similarly impossible for PCSO to have sourced these funds from savings. As Atty. Tolentino emphasized, PCSO was running on a deficit from 2004 to 2009.[59] She added that the financial statements for the years 2006 to 2009, which she obtained in her capacity as the Head of the Audit Committee of the PCSO, specifically stated that the PCSO was operating on a deficit in 2006 to 2009.

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[50] *Id.* at 1953, Annex 23 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "R-2" for the Prosecution.

[51] *Id.* at 1955, Annex 25 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "S" for the Prosecution.

[52] *Id.* at 1956, Annex 26 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "T" for the Prosecution.

[53] *Id.* at 1957, Annex 27 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "V" for the Prosecution.

[54] *Id.*

[55] *Ponencia*, p. 7.

[56] *Ponencia*, p. 7.

[57] *Id.* at 2062, Annex 36 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "E" for the Prosecution.

[58] *Id.* at 2063, Annex 37 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "W" for the Prosecution.

[59] *Ponencia*, p. 5.

Third, the prosecution demonstrated that Uriarte was enabled to withdraw from the CIF solely on the strength of Former President Arroyo's approval *and* despite not having been designated as a special disbursing officer, pursuant to Commission on Audit Circulars 92-385 and 03-002.[60]

Commission on Audit Circular 92-385 provides:

3 – The following must be submitted whenever a new Disbursing Officer is appointed.

A. *Certified xerox copy of the designation of Special Disbursing Officers.*

B. Certified xerox copy of their fidelity bonds.

C. Specimen signature of officials authorized to sign cash advances and liquidation vouchers. (Emphasis supplied)

In addition, Commission on Audit Circular 2003-02 specifically requires that:

Whenever a new Disbursing Officer is appointed or designated, the following must likewise be submitted:

*a. Certified copy of the designation of the Special Disbursing Officer (SDO).*

b. Certified copies of the Fidelity Bond of the designated SDO.

c. Specimen signatures of officials authorized to sign cash advances and liquidation reports (formerly liquidation vouchers), particularly:

c.1 Special Disbursing Officer

c.2 Head of Agency

c.3 Chief Accountant

c.4 Budget Officer

When the Head of Agency is the Special Disbursing Officer, the Head of Agency must make a signed statement to that effect. (Emphasis supplied)

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[60] *Id.* at 1652-1653, Comment filed by the Ombudsman in G.R. No. 220598.

The prosecution pointed out that Uriarte was only designated as Special Disbursing Officer on February 18, 2009,[61] after several disbursements had already been made.[62] Thus, he managed to use the additional CIF at least three (3) times in 2008 and in early 2009, solely through Former President Arroyo's approval.[63]

Fourth, there were certifications on disbursement vouchers issued and submitted by Aguas, in his capacity as PCSO Budget and Accounts Manager, which stated that: there were adequate funds for the cash advances; that prior cash advances have been liquidated or accounted for; that the cash advances were accompanied by supporting documents; and that the expenses incurred through these were in order.[64] As posited by the prosecution, these certifications facilitated the drawing of cash advances by PCSO General Manager Uriarte and Chairperson Sergio Valencia.[65]

Aguas repeatedly made the certifications in the disbursement vouchers twenty-three (23) times [66] in the following tenor:

> CERTIFIED: Adequate available funds/budgetary allotment in the amount of ₱_________; expenditure properly certified; supported by documents marked (X) per checklist and back hereof; account codes proper; previous cash advance liquidated/accounted for.[67]

However, as the prosecution pointed out, the certifications were false and irregular because there were no documents that

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[61] *Id.* at 1653, Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "M" for the Prosecution.

[62] At that time, three (3) disbursements were already made based on the approval of the requests of PCSO General Manager Uriarte. These were made on April 2, 2008, August 13, 2008, and January 19, 2009.

[63] *Rollo* (G.R. No. 220598), p. 1653, Comment filed by the Ombudsman in G.R. No. 220598.

[64] *Id.* at 1653, Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibits "JJ" to "H" for the Prosecution.

[65] *Id.*

[66] Sandiganbayan records, Exhibits "JJ" to "H$^3$" for the Prosecution.

[67] Sandiganbayan records, Exhibits "JJ" to "H$^3$" for the Prosecution.

lent support to the cash advances on a per project basis. Moreover, there were no liquidations made of prior cash advances when the certifications were made.[68]

Fifth, *officers from the Philippine National Police, the Armed Forces of the Philippines, and the National Bureau of Investigation gave testimonies to the effect that no intelligence activities were conducted by PCSO with their cooperation, contrary to Uriarte's claims.*[69]

These officers were:

(1) Colonel Ernest Marc P. Rosal of the Intelligence Service of the Armed Forces of the Philippines;[70]
(2) Captain Ramil Roberto B. Enriquez, Assistant Chief of Naval Staff for Intelligence of the Philippine Navy;[71]
(3) Colonel Teofilo Reyno Bailon, Jr., Assistant Chief of Air Staff for Intelligence, A2 at the Philippine Air Force;[72]
(4) Lieutenant Colonel Vince James de Guzman Bantilan, Chief of the Intelligence and Operations Branch of the Office of the Assistant Chief of Staff for Intelligence, G2 at the Philippine Army;[73]
(5) Colonel Orlando Suarez, Chief of the Operations Control Division of the Office of the Chief of Staff for Intelligence, J2 at the Armed Forces of the Philippines;[74]
(6) Atty. Ruel M. Lasala, Head of Special Investigation Services of the National Bureau of Investigation;[75]

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[68] *Rollo* (G.R. No. 220598), p. 1653, Comment filed by the Ombudsman in G.R. No. 220598.

[69] *Id.*

[70] TSN, February 12, 2014.

[71] TSN, January 29, 2014.

[72] TSN, February 5, 2014.

[73] TSN, February 19, 2014.

[74] TSN, February 26, 2014.

[75] TSN, March 5, 2014.

(7) Atty. Reynaldo Ofialdo Esmeralda, Deputy Director for Intelligence Services of the National Bureau of Investigation;[76]

(8) Atty. Virgilio Mendez, former Deputy Director for Regional Operations Services of the National Bureau of Investigation;[77] and

(9) Director Charles T. Calima, Jr., former Director for Intelligence of the Philippine National Police.[78]

*The prosecution added that no contracts, receipts, correspondences, or any other documentary evidence exist to support expenses for PCSO's intelligence operations.*[79] *These suggest that funds allocated for the CIF were not spent for their designated purposes, even as they appeared to have been released through cash advances*. This marks a critical juncture in the alleged scheme of the accused. The disbursed funds were no longer in the possession and control of PCSO and, hence, susceptible to misuse or malversation.

Sixth, another curious detail was noted by the prosecution: that Former President Arroyo directly dealt with PCSO despite her having issued her own executive orders, which put PCSO under the direct control and supervision of other agencies.

On November 8, 2004, Former President Arroyo issued Executive Order No. 383, Series of 2004, which placed PCSO under the supervision and control of the Department of Welfare and Development. Section 1 of this Executive Order stated:

> SECTION 1. The Philippine Charity Sweepstakes Office shall hereby be ***under the supervision and control*** of the Department of Social Welfare and Development.[80] (Emphasis supplied)

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[76] TSN, March 12, 2014.

[77] TSN, March 19, 2014.

[78] TSN, March 26, 2014.

[79] *Rollo* (G.R. No. 220598), p. 1653, Comment filed by the Ombudsman in G.R. No. 220598.

[80] Executive Order No. 383, series of 2004.

Amending Executive Order No. 383 on August 22, 2005, Former President Arroyo issued Executive Order No. 455, Series of 2005. This put PCSO under the supervision and control of the Department of Health. Section 1 of this Executive Order stated:

> SECTION 1. The Philippine Charity Sweepstakes Office shall hereby be ***under the supervision and control*** of the Department of Health.[81] (Emphasis supplied)

As Atty. Tolentino emphasized, with the set-up engendered by Executive Orders 383 and 455, it became necessary for PCSO projects to first be approved at the department-level before being referred to the Office of the President for approval. Nevertheless, PCSO General Manager Uriarte made her requests directly to Former President Arroyo, who then acted favorably on them, as shown by her handwritten notations.[82]

PCSO General Manager Uriarte had intimate access to the Office of the President and was likewise critical in the allocation, disbursement, and release of millions of pesos in cash.

Summing up, the prosecution adduced evidence indicating that Former President Arroyo and Aguas were necessary cogs to a machinery effected to raid the public treasury. It is hardly of consequence, then, that their direct personal gain has not been indubitably established.

For Former President Arroyo, this came through her capacity as the sole and exclusive approving authority. The funds, demarcated as confidential and intelligence funds, would not have been at any prospective plunderer's disposal had their release not been sanctioned. As the prosecution asserted, her own handwriting attests to her assent.

It defies common sense to think that other malevolent actors could have so easily misled Former President Arroyo into giving

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[81] Executive Order No. 455, series of 2005.

[82] See *Rollo* (G.R. No. 220598), p. 1831, Annex 5 of the Comment filed by the Ombudsman in G.R. No. 220598; Sandiganbayan records, Exhibit "P" for the Prosecution.

her assent. The more reasonable inference is that she acted with awareness, especially considering the large amounts involved, as well as the sheer multiplicity in the number of times her assent was sought.

Violations of regulations must necessarily be presumed to not have been made out of ignorance. This is especially true of senior government officials. The greater one's degree of responsibility, as evinced by an official's place in the institutional hierarchy, the more compelling the supposition that one acted with the fullness of his or her competence and faculty. The person involved here was once at the summit of the entire apparatus of government: a former President of the Republic.

***These commonsensical and soundly logical suppositions arising from the prosecution's evidence demand a process through which the defendant Former President Arroyo may prove the contrary. Trial, then, must continue to afford her this opportunity.***

We cannot assume that the President of the Philippines, the Chief Executive, was ignorant of these regulations and these infractions.

For Aguas, he was in a position to enforce internal control mechanisms to ensure that the PCSO's financial mechanisms comply with the relevant laws and regulations. As the prosecution pointed out, his task was far from merely being perfunctory and ministerial.[83] By his certifications on disbursement vouchers, he attested that: "(1) the expenditure for which disbursements are made have been verified; (2) the expenditure for which the disbursements are made are supported by documents; (3) that account codes from which the fund[s] are to be sourced are proper; and (4) the previous cash advance has been liquidated/accounted."[84]

His very act of making these certifications presume an active effort to verify and make the necessary confirmations. Doing

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[83] *Id.* at 3476-3479, Comment filed by the Ombudsman in G.R. No. 220953.

[84] *Id.*

so without these prerequisites is tantamount to knowingly making false declarations. Still, Aguas appears to have proceeded to certify anyway, thereby enabling his co-accused PCSO General Manager Uriarte and Chairperson Sergio Valencia to draw cash advances. This drew the proverbial door open to the larger scheme of plunder, which the Information averred. As the prosecution explained:

> 5.11. Petitioner, despite committing a falsification knew well that he had to sign and certify the [disbursement vouchers] because he knew that without his false certification, no check to pay for the disbursement vouchers thus prepared can be issued and no money can be withdrawn by Uriarte and Valencia. Petitioner Aguas' certification truly facilitated the release of the checks in favor of Uriarte and Valencia. Without his false certification, the scheme of repeatedly raiding the coffers of PCSO would not have been accomplished.[85]

The proof adduced by the prosecution raises legitimate questions. It is well within the reasonable exercise of its competencies and jurisdiction that the Sandiganbayan opted to proceed with the remainder of trial so that these issues could be addressed. Thus, it was in keeping with the greater interest of justice that the Sandiganbayan denied petitioners' demurrers to evidence and issued its assailed resolutions.

**III**

Parenthetically, even assuming without conceding that petitioners could not be convicted of plunder, the prosecution still adduced sufficient evidence to convict them with malversation of public funds, as penalized by Article 217 of the Revised Penal Code. Hence, trial should still proceed to receive their evidence on this point.

At the heart of the offense of plunder is the existence of "a combination or series of overt or criminal acts." *Estrada v. Sandiganbayan*[86] clarified that "to constitute a "series" there

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[85] *Id.* at 3478, Comment filed by the Ombudsman in G.R. No. 220953.

[86] 427 Phil. 820 (2002) [Per *J.* Puno, *En Banc*].

must be two (2) or more overt or criminal acts falling under the same category of enumeration found in Sec. 1, par. (d), say, misappropriation, malversation and raids on the public treasury, all of which fall under Sec. 1, par. (d), subpar. (1)."

Accordingly, this Court has consistently held that the lesser offense of malversation can be included in plunder when the amount amassed reaches at least ₱50,000,000.00.[87] This Court's statements in *Estrada v. Sandiganbayan* are an acknowledgement of how the predicate acts of bribery and malversation (if applicable) need not be charged under separate informations when one has already been charged with plunder:

> A study of the history of R.A. No. 7080 will show that the law was crafted to avoid the mischief and folly of filing multiple informations. The Anti-Plunder Law was enacted in the aftermath of the *Marcos regime* where charges of ill-gotten wealth were filed against former President Marcos and his alleged cronies. *Government prosecutors found no appropriate law to deal with the multitude and magnitude of the acts allegedly committed by the former President to acquire illegal wealth.* They also found that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. *Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges.* The preparation of multiple Informations was a legal nightmare but eventually, thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan. Republic Act No. 7080 or the Anti-Plunder Law was enacted precisely to address this procedural problem. (Emphasis in the original, citations omitted)

In *Atty. Serapio v. Sandiganbayan*,[88] the accused assailed the information for charging more than one offense: bribery,

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[87] *Estrada v. Sandiganbayan*, 421 Phil. 290 (2001) [Per *J.* Bellosillo, *En Banc*]; *Enrile v. People*, G.R. No. 213455, August 11, 2015, 766 SCRA 1 [Per *J.* Brion, *En Banc*]; *Serapio v. Sandiganbayan*, 444 Phil. 499 (2003) [Per *J.* Callejo, Sr., *En Banc*]; *Estrada v. Sandiganbayan,* 427 Phil. 820 (2002) [Per *J.* Puno, *En Banc*].

[88] 444 Phil. 499 (2003) [Per *J.* Callejo Sr., *En Banc*].

malversation of public funds or property, and violations of Sec. 3(e) of Republic Act No. 3019 and Section 7(d) of Republic Act No. 6713. This Court observed that "the acts alleged in the information are not separate or independent offenses, but are predicate acts of the crime of plunder."[89] The Court, quoting the Sandiganbayan, clarified:

> It should be stressed that the Anti-Plunder law specifically Section 1(d) thereof does not make any express reference to any specific provision of laws, other than R.A. No. 7080, as amended, which coincidentally may penalize as a separate crime any of the overt or criminal acts enumerated therein. The said acts which form part of the combination or series of act are described in their generic sense. Thus, aside from 'malversation' of public funds, the law also uses the generic terms 'misappropriation,' 'conversion' or 'misuse' of said fund. The fact that the acts involved may likewise be penalized under other laws is incidental. The said acts are mentioned only as predicate acts of the crime of plunder and the allegations relative thereto are not to be taken or to be understood as allegations charging separate criminal offenses punished under the Revised Penal Code, the Anti-Graft and Corrupt Practices Act and Code of Conduct and Ethical Standards for Public Officials and Employees.[90]

The observation that the accused in these petitions may be made to answer for malversation was correctly pointed out by Justice Ponferrada of the Sandiganbayan in his separate concurring and dissenting opinion:

> There is evidence, however, that certain amounts were released to accused Rosario Uriarte and Sergio Valencia and these releases were made possible by certain participatory acts of accused Arroyo and Aguas, as discussed in the subject Resolution. Hence, there is a need for said accused to present evidence to exculpate them from liability which need will warrant the denial of their Demurrer to Evidence, as under the variance rule they may be held liable for the lesser crimes which are necessarily included in the offense of plunder.[91]

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[89] *Id.* at 524-525.

[90] *Id.*

[91] Petition, Annex "B", *People v. Gloria Macapagal Arroyo, et al.,* Crim. Case No. SB-12-crm-0174 Concurring and Dissenting, April 6, 2016, p. 5, per Ponferrada *J.*

Significantly, the Sandiganbayan's Resolution to the demurrers to evidence includes the finding that the PCSO Chairperson Valencia, should still be made to answer for malversation as included in the Information in these cases.[92] Since the Information charges conspiracy, both petitioners in these consolidated cases still need to answer for those charges. Thus, the demurrer to evidence should also be properly denied. It would be premature to dismiss and acquit the petitioners.

**IV**

The sheer absence of grave abuse of discretion is basis for denying the consolidated Petitions. There, however, lies a more basic reason for respecting the course taken by the Sandiganbayan.

Rule 119, Section 23 of the Revised Rules on Criminal Procedure articulates the rules governing demurrers to evidence in criminal proceedings:

RULE 119
TRIAL

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

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

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

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[92] Petition, Annex "A", *People v. Gloria Macapagal Arroyo, et al.*, Crim. Case No. SB-12-CRM-0174, Resolution, April 6, 2016, pp. 44-52, per Lagos *J*.

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

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

A demurrer to evidence is "an objection or exception by one of the parties in an action at law, to the effect that the evidence which his adversary produced is insufficient in point of law (whether true or not) to make out his case or sustain the issue."[93]

It works by "challeng[ing] the sufficiency of the whole evidence to sustain a verdict."[94] In resolving the demurrer to evidence, a trial court is not as yet compelled to rule on the basis of proof beyond reasonable doubt[95] — the requisite quantum of proof for *conviction* in a criminal proceeding[96] — but "is merely required to ascertain whether there is *competent or sufficient evidence* to sustain the indictment or to support a verdict of guilt."[97]

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[93] *Choa v. Choa*, 441 Phil. 175, 183 (2002) [Per *J*. Panganiban, Third Division], citing *Black's Law Dictionary* 433 (6th ed., 1990).

[94] *Gutib v. Court of Appeals,* 371 Phil. 293, 300 (1999) [Per *J*. Bellosillo, Second Division].

[95] Cf. *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323-324 (2007) [Per *J*. Nachura, Third Division], on demurrer to evidence in civil cases: "In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence. 'Preponderance of evidence' means evidence which is of greater weight, or more convincing than that which is offered in opposition to it. ***It is, therefore, premature to speak of 'preponderance of evidence' in a demurrer to evidence*** because it is filed before the defendant presents his evidence." (Emphasis supplied)

[96] RULES OF COURT, Rule 133, Sec. 2 provides:

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

[97] *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999) [Per *J*. Bellosillo, Second Division], emphasis supplied.

A demurrer to evidence is a device to effect one's right to a speedy trial[98] and to speedy disposition of cases.[99] This has been settled very early on in our jurisprudence:

[T]here seems now to be no reason for putting the defendant to the necessity of presenting his proof, if, at the time of the close of the proof of the prosecution, there is not sufficient evidence to convince the lower court that the defendant is guilty, beyond a reasonable doubt, of the crime charged in the complaint. . . .

. . . [W]e see no reason now . . . for denying the right of the lower court to dismiss a case at the close of the presentation of the testimony by the prosecuting attorney, if at that time there is not sufficient evidence to make out a prima facie case against the defendant. If, however, the lower court, at that time, in the course of the trial, refuses to dismiss the defendant, his dismissal can not be made the basis of an appeal for the purpose of reversing the sentence of the lower court.[100]

Indeed, if there is not even "competent or sufficient evidence"[101] to sustain a prima facie case, there cannot be proof beyond reasonable doubt to ultimately justify the deprivation of one's life, liberty, and/or property, which ensues from a criminal conviction. There is, then, no need for even burdening

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[98] CONST., Art. III, Sec. 14 provides:

SECTION 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[99] CONST., Art. III, Sec. 16 provides:

SECTION 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[100] *Romero v. U.S.,* 22 Phil. 565, 569 (1912) [Per *J.* Johnson, First Division].

[101] *Gutib v. Court of Appeals*, 371 Phil. 293, 300 (1999) [Per *J.* Bellosillo, Second Division].

the defendant with laying out the entirety of his or her defense. If proof beyond reasonable doubt is so far out of the prosecution's reach that it cannot even make a prima facie case, the accused may as well be acquitted. On the part of the court before which the case is pending, it may likewise then be disburdened of the rigors of a full trial. A demurrer to evidence thereby incidentally serves the interest of judicial economy.

In *Spouses Condes v. Court of Appeals*:[102]

> The purpose of a demurrer to evidence is precisely to expeditiously terminate the case without the need of the defendant's evidence. It authorizes a judgment on the merits of the case without the defendant having to submit evidence on his part as he would ordinarily have to do, if it is shown by plaintiff's evidence that the latter is not entitled to the relief sought.[103]

**V**

The competence to determine whether trial must continue and judgment on the merits eventually rendered is exclusively lodged in the trial court:

> Whether or not the evidence presented by the prosecuting attorney, at the time he rests his cause, is sufficient to convince the court that the defendant is guilty, beyond a reasonable doubt, of the crime charged, ***rests entirely within the sound discretion and judgment of the lower court.***[104] (Emphasis supplied)

This is because it is before the trial court that evidence is presented and the facts are unraveled. By its very nature as a "trial" court, the adjudicatory body has the opportunity to personally observe the demeanor of witnesses delivering testimonial evidence, as well as to peruse the otherwise sinuous mass of object and documentary evidence. It is the tribunal

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[102] 555 Phil. 311 (2007) [Per *J.* Nachura, Third Division].

[103] *Id.* at 324, *citing Heirs of Emilio Santioque v. Heirs of Emilio Calma*, 536 Phil. 524, 540-541 (2006) [Per *J.* Callejo, First Division].

[104] *Romero v. U.S.*, 22 Phil. 565, 569 (1912) [Per *J.* Johnson, First Division]. In the context of this Decision, "lower court" was used to mean "trial court."

with the capacity to admit and observe and, in conjunction with this case, the principal capacity to test and counterpoise. Thus, it entertains and rules on objections to evidence.

Therefore, it follows that if a demurrer to evidence is denied, the correctness of this denial may only be ascertained when the consideration of evidence has been consummated. There is no better way of disproving the soundness of the trial court's having opted to continue with the proceedings than the entire body of evidence:

> Whether he committed an error in denying the [demurrer to evidence], for insufficiency of proof, can only be determined upon appeal, and then ***not because he committed an error, as such,*** *but because the evidence adduced during the trial of the cause was not sufficient to show that the defendant was guilty of the crime charged*.[105] (Emphasis supplied)

The settled wisdom is that while a demurrer is an available option to the accused so that he may speedily be relieved of an existing jeopardy, it is the tribunal with the opportunity to scrutinize the evidence that can best determine if the interest of *justice* — not of any particular party — is better served by either immediately terminating the trial (should demurrer be granted) or still continuing with trial (should demurrer be denied). It is this wisdom that animates Rule 119, Section 23's proscription against reviews "by appeal or by certiorari *before judgment*."

Accordingly, in the event that a demurrer to evidence is denied, "the remedy is . . . to continue with the case in due course and *when an unfavorable verdict is handed down*, to take an appeal in the manner authorized by law."[106] The proper subject of the appeal is the trial court's judgment convicting the accused, not its prior order denying the demurrer. The denial order is but an interlocutory order rendered during the pendency of the

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[105] *Id.*

[106] *Soriquez v. Sandiganbayan*, 510 Phil. 709, 719 (2005) [Per *J.* Garcia, Third Division], *citing Quiñon v. Sandiganbayan*, 338 Phil. 290, 309 (1997) [Per *C.J.* Narvasa, Third Division].

case,[107] while the judgment of conviction is the "judgment or final order that completely disposes of the case"[108] at the level of the trial court.

*People v. Court of Appeals*[109] involved two assailed Resolutions of the Court of Appeals. The first assailed Resolution granted the accused's Motion to consider the trial court's denial order not as an interlocutory order but as a "judgment of conviction." In granting this Motion, the first assailed Resolution also considered the Petition for Certiorari subsequently filed before the Court of Appeals as an "appeal" from that "judgment of conviction." This Resolution ruled that the Court of Appeals should proceed to rule on the "appeal" as soon as the parties' appeal briefs or memoranda had been filed. The second assailed Resolution considered the "appeal" submitted for resolution.

This Court found grave abuse of discretion on the part of the Court of Appeals in issuing the assailed Resolutions, particularly in "preempt[ing] or arrogat[ing] unto itself the trial court's original and exclusive jurisdiction."[110] In making its conclusions, this Court emphasized an appellate court's lack of competence or jurisdiction to render an original judgment on the merits, i.e., one which, at the first instance, is based on the evidence or the facts established. It further explained that the exercise of appellate jurisdiction is contingent on a prior judgment rendered by a tribunal exercising original jurisdiction:

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[107] *Azor v. Sayo*, 273 Phil. 529, 533 (1991) [Per *J.* Paras, *En Banc*]: "[A] denial of the demurrer is not a final order but merely an interlocutory one. Such an order or judgment is only provisional, as it determines some point or matter but is not a final decision of the whole controversy."

[108] RULES OF COURT, Rule 41, Sec. 1 provides:

SECTION 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

. . . . . . . . .

(c) An interlocutory order;

[109] 204 Phil. 511 (1982) [Per *J.* Teehankee, First Division].

[110] *Id.* at 517.

Manifestly, r*espondent court was bereft of jurisdiction* to grant accused's counsel's motion, *supra*, *to by-pass the trial court and itself "find the accused guilty and impose upon them the requisite penalty provided by law*" (with their proposal to consider the trial court's denial order as a "judgment of conviction") and then review its own verdict and imposition of penalty (with the conversion of the certiorari petition into one of review on appeal).

*The exclusive and original jurisdiction* to hear the case for estafa involving the sum of US$999,000.00 and *pass judgment upon the evidence and render its findings of fact and in the first instance adjudicate the guilt or non-guilt of the accused lies with the trial court* i.e., the Court of First Instance concurrently with the Circuit Criminal Court, as in this case.

On the other hand, the certiorari petition before it was filed only in aid of its appellate jurisdiction on the narrow issue of whether the trial court committed a grave abuse of discretion in denying the motion to dismiss the criminal case. Such a petition merited outright dismissal, more so with the accused's motion to consider the denial order as a verdict of conviction as above shown.

*There was no judgment of the trial court over which respondent court could exercise its appellate jurisdiction.* The mandate of Article X, Section 9 of *the Constitution requires that "Every decision of a court of record shall state the facts and the law on which it is based.*" Rule 120, section 2 of the Rules of Court requires further that "The judgment must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a *statement of the facts proved or admitted by the defendant and upon which the judgment is based*. If it is of conviction the judgment or sentence shall state (a) the legal qualification of the offense constituted by the acts committed by the defendant, and the aggravating or mitigating circumstances attending the commission thereof, if there is any; (b) the participation of the defendant in the commission of the offense, whether as principal, accomplice or accessory after the fact; (c) the penalty imposed upon the defendant party; and (d) the civil liability or damages caused by the offended party, if there is any, unless the enforcement of the civil liability by a separate action has been reserved." *It is obvious that the denial order was not such a judgment*.[111] (Emphasis supplied, citations omitted)

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[111] *Id.* at 528-529.

For the same reason that a denial order is an interlocutory order, it may not be assailed through a petition for certiorari. However, *Resoso v. Sandiganbayan*[112] explained that the non-availability of a petition of certiorari is premised not only on the interlocutory nature of a denial order, but more so on how "certiorari does not include the correction of evaluation of evidence":[113]

Petitioner would have this Court review the assessment made by the respondent Sandiganbayan on the sufficiency of the evidence against him at this time of the trial. *Such a review cannot be secured in a petition for certiorari*, prohibition, and mandamus *which is not available to correct mistakes in the judge's findings and conclusions or to cure erroneous conclusions of law and fact.* Although there may be an error of judgment in denying the demurrer to evidence, this cannot be considered as grave abuse of discretion correctible by certiorari, as *certiorari does not include the correction of evaluation of evidence*. When such an adverse interlocutory order is rendered, the remedy is not to resort to certiorari or prohibition but to continue with the case in due course and when an unfavorable verdict is handed down, to take an appeal in the manner authorized by law.[114] (Emphasis supplied, citations omitted)

The invariable import of the entire body of jurisprudence on demurrer to evidence is the primacy of a trial court's capacity to discern facts. For this reason, the last paragraph of Rule 119, Section 23 is cast in such certain and categorical terms that its text does not even recognize a single exception:

SEC. 23. *Demurrer to evidence.* — . . .

. . . . . . . . .

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

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[112] 377 Phil. 249 (1999) [Per *J.* Gonzaga-Reyes, Third Division].

[113] *Id.* at 256, *citing Interorient Maritime Enterprises, Inc. v. NLRC,* 330 Phil. 493, 503 (1996) [Per *J.* Panganiban, Third Division].

[114] *Id.*

**VI**

It is true that the Revised Rules on Criminal Procedure is subordinate to and must be read in harmony with the Constitution. Article VIII, Section 1 of the 1987 Constitution spells out the injunction that "[j]udicial power includes the duty of the courts of justice . . . to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of ***any branch or instrumentality*** of the Government." Judicial review of a denial order is, therefore, still possible.

However, the review must be made on the narrowest parameters, consistent with the Constitution's own injunction and the ba*sic* nature of the remedial vehicle for review, i.e., a petition for certiorari:

Though interlocutory in character, an order denying a demurrer to evidence may be the subject of a certiorari proceeding, *provided the petitioner can show that it was issued with grave abuse of discretion; and that appeal in due course is not plain, adequate or speedy under the circumstances*. It must be stressed that a writ of certiorari may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction, not errors of judgment. Where the issue or question involves or affects the wisdom or legal soundness of the decision — not the jurisdiction of the court — the same is beyond the province of a petition for certiorari.[115] (Emphasis supplied)

Relief from an order of denial shall be allowed only on the basis of grave abuse of discretion amounting to lack or excess of jurisdiction. At the core of this requirement is the existence of an "abuse." Further, the operative qualifier is "grave." Thus, to warrant the grant of a writ of certiorari, the denial of demurrer must be so arbitrary, capricious, or whimsical as to practically be a manifestation of the trial court's own malevolent designs

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[115] *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 322 (2007) [Per *J*. Nachura, Third Division] citing *Choa v. Choa*, 441 Phil. 175, 181 (2002) [Per *J*. Panganiban, Third Division], *Deutsche Bank Manila v. Chua Yok See,* 517 Phil. 212 (2006) [Per *J*. Callejo, First Division].

against the accused or to be tantamount to abject dereliction of duty:

> [T]he 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. Mere abuse of discretion is not enough: it must be grave.[116]

Even then, grave abuse of discretion alone will not sustain a plea for certiorari. Apart from grave abuse of discretion, recourse to a petition for certiorari must be impelled by a positive finding that "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." [117]

A sweeping reference to the power of judicial review does not sanction an ad hoc disregard of principles and norms articulated in the Rules of Court, such as those on the basic nature and availability of a Rule 65 petition, as well as the availability of relief from orders denying demurrers to evidence. These are Rules which this Court itself promulgated and by which it voluntarily elected to be bound. More importantly, these Rules embody a wisdom that was articulated in an

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[116] *Mitra v. Commission on Elections,* 636 Phil. 753, 777 (2010) [Per *J.* Brion, *En Banc*].

[117] RULES OF COURT, Rule 65, Sec. 1 provides:

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.

environment removed from the ephemeral peculiarities of specific cases. They are not to be rashly suspended on a provisional basis. Otherwise, we jeopardize our own impartiality.

The power of judicial review through a petition for certiorari must be wielded delicately. The guiding temperament must be one of deference, giving ample recognition to the unique competence of trial courts to enable them to freely discharge their functions without being inhibited by the looming, disapproving stance of an overzealous superior court.

**VII**

The need for prudence and deference is further underscored by other considerations: first, a policy that frowns upon injunctions against criminal prosecution; and second, the need to enable mechanisms for exacting public accountability to freely take their course.

As a rule, "injunction will not lie to enjoin a criminal prosecution."[118] This is because "public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society except in specified cases among which are to prevent the use of the strong arm of the law in an oppressive and vindictive manner, and to afford adequate protection to constitutional rights."[119]

"What cannot be done directly, cannot be done indirectly."[120] The quoted statements were made in jurisprudence and specifically pertained to the issuance of writs of injunction. Nevertheless, granting a petition for certiorari assailing the denial of demurrer to evidence will similarly mean the cessation of proceedings that, in the trial court's wisdom, were deemed imperative. By the stroke of another court's hand, the conduct

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[118] *Asutilla v. Philippine National Bank*, 225 Phil. 40, 43 (1986) [Per *J.* Melencio-Herrera, First Division].

[119] *Id.*

[120] *Director of Prisons v. Teodoro*, 97 Phil. 391, 397 (1955) [Per *J.* Labrador, First Division].

of trial is peremptorily cast aside, and a full-scale inquiry into the accused's complicity is undercut.

The public interest that impels an uninhibited full-scale inquiry into complicity for criminal offenses, in general, assumes even greater significance in criminal offenses committed by public officers, in particular. If the legal system is to lend truth to the Constitution's declaration that "[p]ublic office is a public trust,"[121] all means must be adopted and all obstructions cleared so as to enable the unimpaired application of mechanisms for demanding accountability from those who have committed themselves to the calling of public service.

This is especially true in prosecutions for plunder. It is an offense so debased, it may as well be characterized as the apex of crimes chargeable against public officers:

> Our nation has been racked by scandals of corruption and *obscene profligacy of officials in high places* which have shaken its very foundation. The anatomy of graft and corruption has become more elaborate in the corridors of time as unscrupulous people relentlessly contrive more and more ingenious ways to bilk the coffers of the government. Drastic and radical measures are imperative to fight the increasingly sophisticated, extraordinarily methodical and economically catastrophic looting of the national treasury. Such is the Plunder Law, especially designed to disentangle those ghastly tissues of grand-scale corruption which, if left unchecked, will spread like a malignant tumor and ultimately consume the moral and institutional fiber of our nation. *The Plunder Law, indeed, is a living testament to the will of the legislature to ultimately eradicate this scourge and thus secure society against the avarice and other venalities in public office*.[122] (Emphasis supplied)

This is especially true of prosecution before the Sandiganbayan. Not only is the Sandiganbayan the trial court exercising exclusive, original jurisdiction over specified crimes committed by public officers; it is also a court that exists by express constitutional fiat.

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[121] CONST., Art. XI, Sec. 1.

[122] *Estrada v. Sandiganbayan*, 421 Phil. 290, 366-367 (2001) [Per *J.* Bellosillo, *En Banc*].

The Sandiganbayan was created by statute, that is, Presidential Decree No. 1486. However, this statute was enacted pursuant to a specific injunction of the 1973 Constitution:

SECTION 5. The National Assembly shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.[123]

Under the 1987 Constitution, the Sandiganbayan continues to exist and operate by express constitutional dictum:

SECTION 4. The present anti-graft court known as the Sandiganbayan shall continue to function and exercise its jurisdiction as now or hereafter may be provided by law.[124]

Though the Sandiganbayan is not an independent constitutional body, that it owes its existence to an express and specific constitutional mandate is indicative of the uniqueness of its competence. This "expertise-by-constitutional-design" compels a high degree of respect for its findings and conclusions within the framework of its place in the hierarchy of courts.

Guided by these principles, animated by the wisdom of deferring to the Sandiganbayan's competence — both as a trial court and as the constitutionally ordained anti-graft court — and working within the previously discussed parameters, this Court must deny the consolidated Petitions.

This Court is not a trier of facts. Recognizing this Court's place in the hierarchy of courts is as much about propriety in recognizing when it is opportune for this Court to intervene as

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[123] CONST. (1973), Art. XIII, Sec. 5 was subsequently amended to read as:

SEC. 5. The Batasang Pambansa shall create a special court, to be known as Sandiganbayan, which shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law.

[124] CONST., Art. XI, Sec. 4.

it is about correcting the perceived errors of those that are subordinate to it.

Prudence dictates that we abide by the established competence of trial courts. We must guard our own selves against falling into the temptation (against which we admonished the Court of Appeals in *People v. Court of Appeals*) to "preempt or arrogate unto [ourselves] the trial court's original and exclusive jurisdiction."[125]

We are faced with an independent civil action, not an appeal. By nature, a petition for certiorari does not enable us to engage in the "correction of evaluation of evidence."[126] In a Rule 65 petition, we are principally equipped with the parties' submissions. It is true that in such petitions, we may also require the elevation of the records of the respondent tribunal or officer (which was done in this case). Still, these records are an inadequate substitute for the entire enterprise that led the trial court — in this case, the Sandiganbayan — to its conclusions.

The more judicious course of action is to let trial proceed at the Sandiganbayan. For months, it received the entire body of evidence while it sat as a collegiate court. Enlightened by the evidence with which it has intimate acquaintance, the Sandiganbayan is in a better position to evaluate them and decide on the full merits of the case at first instance. It has the competence to evaluate both substance and nuance of this case. Thus, in this important case, what would have emerged is a more circumspect judgment that should have then elevated the quality of adjudication, should an appeal be subsequently taken.

**VIII**

The cardinal nature of the offense charged, the ascendant position in government of the accused (among them, a former

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[125] *People v. Court of Appeals,* 204 Phil. 511, 517 (1982) [Per *J*. Teehankee, First Division].

[126] *Resoso v. Sandiganbayan*, 377 Phil. 249 (1999) [Per *J*. Gonzaga-Reyes, Third Division], *citing Interorient Maritime Enterprises, Inc. v. NLRC*, 330 Phil. 493, 503 (1996) [Per *J*. Panganiban, Third Division].

President of the Republic), and the sheer amount of public funds involved demand no less. Otherwise, the immense public interest in seeing the prosecution of large-scale offenders and in the unbridled application of mechanisms for public accountability shall be undermined.

I dissent from the view of the majority that there was insufficient evidence to support a finding beyond reasonable doubt that the accused were in conspiracy to commit a series or combination of acts to amass and accumulate more than Three Hundred Million Pesos within 2008 to 2010 through raids of the public coffers of the PCSO.

If any, what the majority reveals as insufficient may be the ability of the judiciary to correctly interpret the evidence with the wisdom provided by the intention of our laws on plunder and the desire of the sovereign through a Constitution that requires from public officers a high degree of fidelity to public trust. We diminish the rule of law when we deploy legal interpretation to obfuscate rather than to call out what is obvious.

A total of Php365,997,915.00 was disbursed in cash as additional Confidential and Intelligence Fund (CIF) from the PCSO. Where it went and why it was disbursed was not fully explained. It is clear that the cash was taken out by the General Manager and the Chair of the PCSO among others. Its disbursement was made possible only by repeated acts of approval by the former President. The General Manager had intimate access to the President herself. She bypassed layers of supervision over the PCSO. The approvals were in increasing amounts and each one violating established financial controls. The former President cannot plead naivete. She was intelligent and was experienced.

The scheme is plain except to those who refuse to see.

**ACCORDINGLY,** I vote to **DENY** the consolidated Petitions for Certiorari. Public respondent Sandiganbayan committed no grave abuse of discretion in issuing the assailed April 6, 2015 and September 10, 2015 Resolutions.

**THIRD DIVISION**

[G.R. No. 183645. July 20, 2016]

**HEIRS OF GAMALIEL ALBANO, represented by ALEXANDER ALBANO and all other person living with them in the subject premises,** *petitioners, vs.* **SPS. MENA C. RAVANES and ROBERTO RAVANES,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; PROCEDURE IN THE COURT OF APPEALS; APPEALS; PETITIONERS SHOULD HAVE RECKONED THE 15-DAY PERIOD TO APPEAL FROM THE RECEIPT OF THE DENIAL OF THE MANIFESTATION AND MOTION TO STAY EXECUTION OF JUDGMENT WHICH IS ACTUALLY A MOTION FOR RECONSIDERATION OF THE CA DECISION.—** The facts and material dates are undisputed. On September 4, 2007, petitioners received notice of the CA Decision. On September 19, 2007, they filed a Manifestation and Motion to Stay the Execution of Judgment, which the CA denied in its February 20, 2008 Resolution. The petitioners received a copy of this Resolution on February 22, 2008. Thereafter, on March 7, 2008, petitioners filed a Motion for Reconsideration of the February 20, 2008 Resolution of the CA. The CA also denied this motion in its July 7, 2008 Resolution, a copy of which was received by the petitioners on July 14, 2008. Subsequently, petitioners filed before us a Motion for Additional Period to File Petition for Review, which we granted. They prayed that they be given additional 30 days within which to file their petition or from July 29, 2008 to August 28, 2008. Petitioners filed the petition for review on August 28, 2008. The above narration of material dates gives a semblance that the present petition was seasonably filed. However, the records show that petitioners should have reckoned the 15-day period to appeal from the receipt of the denial of the Manifestation and Motion to Stay Execution of Judgment, and not from their receipt of the denial of the Motion for Reconsideration. Having failed to do so, petitioners' right to appeal by *certiorari* lapsed as early as March 9, 2008 when

the assailed CA Decision became final and executory. Petitioners' Manifestation and Motion to Stay Execution of Judgment is, in actuality, a motion for reconsideration of the CA Decision. x x x [T]he relief prayed for by petitioners in this manifestation and motion is the same relief obtained once a motion for reconsideration is filed on time x x x — to stay the execution of judgment.

2. **ID.; ID.; ID.; ID.; MOTION FOR RECONSIDERATION WHICH IS A MERE REHASH OF THE ARGUMENTS RAISED IN THE MANIFESTATION AND MOTION TO STAY EXECUTION OF JUDGMENT IS CONSIDERED AS A SECOND MOTION FOR RECONSIDERATION PROHIBITED BY LAW.—** On March 7, 2008, however, petitioners filed a Motion for Reconsideration of the February 20, 2008 Resolution instead. This motion for reconsideration partakes of the nature of a *second* motion for reconsideration. In *Tagaytay City v. Sps. De Los Reyes*, we ruled that a motion for reconsideration, even if it was **not** designated as a second motion for reconsideration, is a disguised second motion for reconsideration if it is merely a reiteration of the movant's earlier arguments. Here, petitioners' Motion for Reconsideration is [like] that. x x x The filing of a second motion for reconsideration is prohibited under Rule 52, Section 2 of the 1997 Rules of Civil Procedure, as amended and the prevailing 1999 Internal Rules of the Procedure of the CA (IRCA). Being a prohibited pleading, a second motion for reconsideration does not have any legal effect and does not toll the running of the period to appeal.

3. **ID.; ID.; ID.; A PARTY WHO FAILS TO QUESTION AN ADVERSE DECISION BY NOT FILING THE PROPER REMEDY WITHIN THE PRESCRIBED PERIOD LOSES THE RIGHT TO DO SO AND THE DECISION BECOMES FINAL AND BINDING.—** An appeal is not a matter of right, but is one of sound judicial discretion. It may only be availed of in the manner provided by the law and the rules. A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.

4. **ID.; ID.; ID.; LEASE CONTRACT EXECUTED AFTER PROMULGATION OF THE CA DECISION IS NOT A SUPERVENING EVENT BUT A COMPROMISE THAT**

**MUST HAVE THE CONSENT OF ALL THE PARTIES IN THE CASE.—** The assailed CA Decision was promulgated on August 29, 2007, and petitioners received notice of it on September 4, 2007. The CA Decision ordered petitioners to vacate the property on the ground of respondent-spouses' legitimate need of the premises and expiration of the lease. On September 10, 2007, petitioners entered into a 10-year lease contract with (respondent) Roberto involving the property. Consequently, petitioners allege that the execution of the lease contract lent legitimacy to their occupation of the property, such that the CA Decision is now mooted and should no longer be enforced because to do so would be inequitable. Petitioners insist that the lease contract constitutes a supervening event justifying the stay of the CA Decision. x x x To our mind, instead of a supervening event, the execution of the lease contract partakes of the nature of a compromise. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. x x x A compromise may be entered into at any stage of the case — pending trial, on appeal and even after finality of judgment. x x x However, the validity of the agreement is determined by compliance with the requisites and the principles of contracts, not by when it was entered into. Unfortunately for petitioners, the compromise that they effected is wanting of one of the essential requisites of a valid and binding compromise — consent of all the parties in the case. We have consistently ruled that a compromise agreement cannot bind a party who did not voluntarily take part in the settlement itself and gave *specific individual consent*.

5. **CIVIL LAW; AN ACT PROVIDING FOR STABILIZATION AND REGULATION OF RENTALS OF CERTAIN RESIDENTIAL UNITS FOR OTHER PURPOSES (BP 877); REQUISITES UNDER SECTION 5 (C) AS A GROUND FOR JUDICIAL EJECTMENT; CASE AT BAR.—** The controversy revolves on whether respondent-spouses satisfied the requisites of Section 5 (c) of BP 877 as a ground for judicial ejectment. [T]he requisites are: *(1)* the owner's/lessor's legitimate need to repossess the leased property for his own personal use or for the use of any of his immediate family; *(2)* **the owner/lessor does not own any other available residential unit within the same city or municipality**; *(3)* ***the lease for a definite period has expired; (4)*** **there was formal notice at least three**

**(3) months prior to the intended date to repossess the property**; and *(5)* the owner must not lease or allow the use of the property to a third party for at least one year.

**APPEARANCES OF COUNSEL**

*Ricardo A. Castillo* for petitioners.
*Ernesto F. Bonifacio* for respondents.

**D E C I S I O N**

**JARDELEZA, *J*.:**

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul the August 29, 2007 Decision[2] (CA Decision) and July 7, 2008 Resolution[3] of the Court of Appeals (CA) in CA G.R. SP No. 96111. The CA Decision reversed the May 29, 2006 Decision[4] of Branch 68, Regional Trial Court (RTC) of Pasig City and reinstated the January 19, 2004 Decision[5] of Branch 69, Metropolitan Trial Court (MeTC) of Pasig City. The MeTC ordered petitioners to: (a) vacate the lot owned by respondent-spouses; and (b) pay the monthly back rentals from the month of default until the leased premises are vacated.[6]

**The Facts**

Respondent Mena Ravanes (Mena), married to Roberto Ravanes (Roberto) (collectively, the respondent-spouses), is

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[1] *Rollo*, pp. 7-23.

[2] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso. *Id.* at 25-33.

[3] Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso. *Id.* at pp. 42-43.

[4] *Id.* at 44-46.

[5] *Id.* at 48-51.

[6] *Id.* at 51.

the registered owner of a parcel of land covered by Transfer Certificate of Title No. 57414 located in Caniogan, Pasig City.[7] On about thirty-five (35) square meters of the property stands the two-storey residential house of petitioners.[8] Petitioners' father, Gamaliel Albano, purchased the house in 1986 from a certain Mary Ong Dee.[9] Petitioners leased the property from Mena with the agreement that they will vacate it, regardless of their rental payments, when the latter and her family would need to use it.[10]

In March 2000, respondent-spouses informed petitioners that their daughter, Rowena, is getting married and would need the property to build her house.[11] However, petitioners refused to vacate the property. Thus, respondent-spouses filed a complaint in the Office of the *Barangay* Captain of Caniogan against petitioners.[12] Having failed to reach an amicable settlement, however, the *Barangay* issued a certificate to file action on June 22, 2000.[13]

On September 14, 2000, respondent-spouses filed a Complaint for Ejectment[14] against petitioners in the MeTC of Pasig City. Respondent-spouses cited Section 5 (c) of *Batas Pambansa Blg.* 877 (BP 877)[15] as a ground for ejectment:

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[7] CA Decision, *rollo*, p. 26.

[8] Answer, records, p. 13.

[9] *Id.* at 12.

[10] Complaint, records, p. 2.

[11] *Id.*

[12] Titled "*Pagpapaalis sa paupahang lupa, dahil gagamitin ng anak*." *Rollo*, p. 153.

[13] *Katibayan upang Makadulog sa Hukuman*, Attached as Annex B to the Complaint, records, p. 6.

[14] Records, pp. 1-4.

[15] An Act Providing for the Stabilization and Regulation of Rentals of Certain Residential Units for Other Purposes (1985). The effectivity of BP 877 was extended by Republic Act No. 6828 (from January 1, 1990 to December 31, 1992), Republic Act No. 7644 (from January 1, 1993 to

Section 5. *Grounds for Judicial Ejectment*. — Ejectment shall be allowed on the following grounds:

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(c) Legitimate need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family as a residential unit, such owner or immediate member not being the owner of any other available residential unit within the same city or municipality: Provided, however, That the lease for a definite period has expired: Provided, further, That the lessor has given the lessee formal notice three (3) months in advance of the lessor's intention to repossess the property: and Provided, finally, That the owner/lessor is prohibited from leasing the residential unit or allowing its use by a third party for at least one year.

x x x x x x x x x

Respondent-spouses stated that their daughter needs the property to build her conjugal home.[16] They pleaded that they do not own any other available residential units within Pasig City or anywhere else. They also stated that the lease between them and petitioners had already lapsed as of December 31, 1999. Respondent-spouses claimed they notified petitioners of their intent to repossess the property at least three (3) months in advance. They prayed for the MeTC to order petitioners to vacate the property and remove the improvements in it. They also sought payment of petitioners' rent for July 2000 and attorney's fees.[17]

In their Answer dated October 4, 2000,[18] petitioners countered that respondent-spouses and their predecessors-in-interest assured them that they can stay in the property for as long as they are paying the agreed monthly rentals.[19] Petitioners claimed that

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December 31, 1997) and Republic Act No. 8437 (from January 1, 1998 to December 31, 2001).

[16] Complaint, records, pp. 2-3.

[17] *Id.* at 3-4.

[18] *Id.* at 10-20.

[19] Answer, records, pp. 10 & 13.

their harmonious relationship with respondent-spouses changed in February 2000 when the latter suddenly refused to accept the rental payments for January to June 2000.[20] They belied the claim that respondent-spouses do not own other lots in Pasig City, asserting that respondent-spouses have other suitable residential houses and apartment units in Pasig City as evidenced by photocopies of land titles attached to their Answer.[21] Consequently, petitioners argued that the Complaint should be dismissed because respondent-spouses do not need the property for their personal use.[22]

Further, petitioners alleged respondent-spouses handed them the notice to vacate only on June 15, 2000. The notice demanded petitioners to vacate the premises on or before July 13, 2000. Thus, they were given only a 28-day notice, which was short of the 3-month notice requirement under BP 877.[23]

By way of counterclaim, petitioners prayed that respondent-spouses be ordered to pay moral and exemplary damages and attorney's fees. [24] Petitioners also asked that, in the event the MeTC ruled in favor of respondent-spouses, they be ordered to reimburse petitioners the amount the latter incurred for the repair of their house.[25]

In their Position Paper dated December 26, 2000,[26] respondent-spouses admitted ownership of several properties in Pasig City, but insisted that these properties were not available for their daughter because they were on lease.[27] Respondent-spouses explained that they chose to eject petitioners rather than their

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

[21] *Id.* at 15-16.

[22] *Id.* at 17.

[23] *Id.* at 16-17.

[24] *Id.* at 19.

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

[26] Records, pp. 71-77.

[27] *Id.* at 73-75.

other lessees because petitioners are delinquent in their rental payments.[28] Respondent-spouses also alleged that they complied with the 3-month notice requirement because they waited for 91 days — from June 15, the date when petitioners received the notice to vacate, until September 14, 2000 — to file the case for ejectment.[29]

In their Position Paper dated January 2, 2001,[30] petitioners reiterated that respondent-spouses have no legal ground to eject them on the basis of an alleged legitimate need for personal use of the property because respondent-spouses own other available lots in Pasig City, and because the 3-month notice requirement was not complied with.

Both parties raised the issue of whether petitioners can be legally ejected from the property under Section 5 (c) of BP 877.

**The Ruling of the MeTC**

In its Decision dated January 19, 2004,[31] the MeTC found for respondent-spouses. The dispositive portion of its Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendant[s] who are hereby ordered to vacate immediately the leased premises located at No. 19-A, A. Flores St., Caniogan, Pasig City, and to pay plaintiffs the monthly [back rentals] of PHP2,131.00 from the month of default until the premises are vacated. Attorney's fees are additionally awarded in favor of plaintiffs in the amount of PHP10,000.00 the same being deemed just and equitable under the circumstances. No pronouncement as to costs.
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> SO ORDERED.[32]

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[28] *Id.* at 74.

[29] *Id.* at 73.

[30] *Id.* at 162-176.

[31] Penned by Judge Julia A. Reyes, *rollo*, pp. 48-51.

[32] *Id.* at 51.

The MeTC held that the lease between respondent-spouses and petitioners is one in which no period of lease has actually been fixed. Thus, under Article 1687 of the New Civil Code, the lease is deemed to be on a month to month basis since rentals were paid monthly. Accordingly, the lease expires every end of the month which gives respondent-spouses a ground for judicial ejectment.[33] The MeTC declared as void and against public policy the interpretation of petitioners of their contract that they were assured of a lifetime lease for as long as they are paying monthly rent. It also explained that respondent-spouses' ownership of other properties is immaterial because as owners of the property, respondent-spouses have the right to repossess it after the monthly expiration of the lease between the parties.[34]

The MeTC also denied petitioners' counterclaim on the ground that they do not have the right to be paid the value of their house's improvements since they built it at their own risk. Petitioners, however, may remove the improvements if respondent-spouses refuse to reimburse one-half of its total value.[35]

## **The Ruling of the RTC**

On appeal before the RTC of Pasig City, petitioners took issue with the MeTC's judgment that respondent-spouses can eject petitioners on the ground of expiration of the lease contract. They contended that the issue about the expiration of the lease was neither invoked by the respondent-spouses in their Complaint nor raised as an issue in the pleadings. Thus, the MeTC should not have departed from the sole issue defined by the parties during the preliminary conference in the MeTC. Petitioners claimed they were denied due process because they were not given the opportunity to meet the issue regarding the alleged expiration of lease.[36]

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[33] *Id.* at 50.

[34] *Id.*

[35] *Rollo*, p. 51.

[36] Appellant's Memorandum in the RTC, records, p. 283.

The RTC agreed with petitioner. In its Decision dated May 29, 2006,[37] the RTC vacated the decision of the MeTC and ordered the dismissal of the complaint for insufficiency of evidence. The RTC opined that the issue in the case is whether respondent-spouses had satisfied the requisites for ejectment under Section 5 (c) of BP 877. It then answered the question in the negative, thus:

Accordingly, the assailed decision is hereby ***RECONSIDERED*** and ***SET ASIDE*** on the ground of denial of due process, and this Court is now tasked to look into the issue of whether or not the plaintiffs have met the following requirements of Section 5, par (c) of the Rental Law as amended:

a). A legitimate need of owner/lessor to repossess his property for his own use or for the use of any immediate member of his family;

b). The need to repossess is for residential [purpose];

c). Such owner or immediate family member does not own any other available residential unit within the city or municipality;

d). The lease agreement should be for a definite period;

e). The period of lease has expired;

f). The lessor has given the lessee a formal notice three (3) months in advance of the lessor's intention to repossess the property.

The assailed decision is unequivocal. It stated that ***"Clearly, this is a lease for which no period of lease has actually been fixed x x x."*** On this score alone, this case necessarily has to fail for the lease covered under this provision of the Rental Law should be one with a definite period, and the lease at bar as held by the lower court is not one with a definite period. But aside from this the defendants also were able to show that the plaintiffs own other available residential units in Pasig City, although the lower court alleged that it is of no moment. Similarly, the defendants were also able to show that the three (3) months requirement notice was not complied with. The assailed decision kept silent on this requirement but the very letter of demand dated June 9, 2000 of the plaintiffs required the defendants to vacate the premises on or before July 13, 2000 or just about a

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[37] Penned by Judge Santiago G. Estrella, *rollo*, pp. 44-46.

month and three (3) days from the date of the letter.[38] (Emphasis in the original.)

## The Ruling of the CA

Respondent-spouses appealed to the CA, reiterating that they have complied with Section 5 (c) of BP 877.[39]

In its Decision dated August 29, 2007, the CA set aside the Decision of the RTC and reinstated the Decision of the MeTC.[40] The CA ruled that, contrary to the findings of the RTC, the lease between respondent-spouses and petitioners is one with a period. Citing *Dula v. Maravilla*[41] and *Rivera v. Florendo*,[42] the CA explained that a lease agreement without a fixed period is deemed to be from month to month if the rentals are paid monthly. Thus, there is a definite period to speak of, and as such, respondent-spouses can eject petitioners from the property on the ground of expiration of their lease under Section 5 (f) of BP 877. The CA thus stated:

> In the instant case, it is undisputed that the rental on the lot was paid monthly. And based on the previous rulings of the Court, it is clearly one with a definite period, which expires every month, upon proper notice to the respondents [herein petitioners]. **Thus, when petitioners** (herein respondent-spouses] **sent a letter of demand dated June 9, 2000 for respondents to vacate the leased premises on July 13, 2000, the lease contract is deemed to have expired as of the end of that month. Upon the expiration of said period, the contract of lease would expire, giving rise to the lessor's right to file an action for ejectment against respondent.**
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> Based on the foregoing, a legal ground for ejectment would still exist against respondents which is the expiration of the lease, under paragraph (f) of Section 5.[43] (Emphasis supplied.)

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[38] RTC Decision, *id.* at 46.

[39] See Petition for Review before the CA, CA *rollo*, pp. 2-13.

[40] *Rollo*, p. 33.

[41] G.R. No. 134267, May 9, 2005, 458 SCRA 249.

[42] G.R. No. 60066, July 31, 1986, 143 SCRA 278.

[43] CA Decision, *rollo*, p. 32.

The CA also held that petitioners failed to present concrete evidence that respondent-spouses have other available properties in Pasig City. Further, the CA found that the respondent-spouses substantially met the 3-month notice requirement since as early as March 2000, respondent-spouses notified petitioners to vacate the property because their daughter needs it. The CA stressed that petitioners participated in a *barangay* hearing regarding the matter.[44]

On September 19, 2007, petitioners filed a Manifestation and Motion to Stay the Execution of Judgment dated August 29, 2007.[45] They manifested that respondent Roberto entered into a lease contract with petitioner Alexander Albano (Alexander) on September 10, 2007,[46] which meant that petitioners are now in lawful occupation of the property. The execution of the CA's Decision is no longer necessary because the judgment was mooted by a supervening event. Petitioners averred that with the renewal of the expired lease contract, the ground for judicial ejectment relied upon by the CA no longer exists.[47]

Further, petitioners claimed that the Contract of Lease operates as a novation of the previous month-to-month lease between petitioners and respondent-spouses, and which renders inutile the allegations that were passed upon in the trial courts below.[48]

Mena filed a Comment[49] to petitioners' manifestation and motion. Mena assailed the validity of the lease contract between her husband, Roberto, and Alexander. She claimed that Roberto has no personality to unilaterally enter into a lease contract with Alexander because the property is her paraphernal

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[44] *Id.* at 30.

[45] CA *rollo*, pp. 198-205.

[46] *Id.* at 199.

[47] *Id.* at 200-202.

[48] *Id.* at 201-202.

[49] *Id.* at 218-222.

property.[50] She further questioned the wisdom of the lease because the monthly rental price of ₱2,131.00 is the same rent existing in 1986.[51]

In its Resolution dated February 20, 2008,[52] the CA denied petitioners' manifestation and motion. The CA held that its Decision dated August 29, 2007 attained finality on September 19, 2007.[53] It found that the lease contract did not operate as a novation of its Decision because it was entered into without the express consent of Mena.[54]

On March 7, 2008, petitioners filed a Motion for Reconsideration of the Resolution dated February 20, 2008.[55] They contended that the Contract of Lease between Roberto and Alexander is valid and binding upon Mena considering the conjugal nature of the property.[56] The CA denied the Motion for Reconsideration in its Resolution[57] dated July 7, 2008. Hence, this petition for review.

Petitioners allege that the CA erred in reversing the RTC's Decision. They aver that under BP 877, the lessor should prove that he or his immediate family member is not the owner of any other available residential unit within the same city or municipality.[58] They also reiterate that the execution of the lease contract between Roberto and Alexander on September 10, 2007 is a supervening event that justifies the stay of execution of the CA Decision,[59] and that Mena cannot assert the paraphernal

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[50] *Id.* at 220.

[51] *Id.* at 218-219.

[52] *Rollo*, pp. 34-38.

[53] *Id.* at 36.

[54] *Id.* at 37.

[55] CA *rollo*, pp. 301-310.

[56] *Id.* at 305.

[57] *Rollo*, p. 42.

[58] Petition, *rollo*, pp. 16-17.

[59] *Id.* at 17-18.

nature of the property for the first time in her Comment before the CA.[60]

In their Comment,[61] respondent-spouses argue that the CA Decision became final and executory on September 20, 2007 because petitioners neither filed a motion for reconsideration nor filed an appeal before us.[62] Accordingly, respondent-spouses plead that petitioners' right to file this petition before us had already lapsed.

## The Issues

The issues before us are:

1. Whether the CA Decision is already final and executory;
2. Whether the execution of the lease contract is a supervening event that will justify the stay of execution of the CA Decision; and
3. Whether the respondent-spouses complied with Section 5 (c) of BP 877.

## Our Ruling

We deny the petition.

***The CA Decision is already Final and Executory***

The facts and material dates are undisputed. On September 4, 2007, petitioners received notice of the CA Decision. On September 19, 2007, they filed a Manifestation and Motion to Stay the Execution of Judgment, which the CA denied in its February 20, 2008 Resolution. The petitioners received a copy of this Resolution on February 22, 2008.

Thereafter, on March 7, 2008, petitioners filed a Motion for Reconsideration of the February 20, 2008 Resolution of the CA. The CA also denied this motion in its July 7, 2008

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

[61] *Id.* at 176-181.

[62] *Id.* at 176-177.

Resolution, a copy of which was received by the petitioners on July 14, 2008.

Subsequently, petitioners filed before us a Motion for Additional Period to File Petition for Review,[63] which we granted. They prayed that they be given additional 30 days within which to file their petition or from July 29, 2008 to August 28, 2008. Petitioners filed the petition for review on August 28, 2008.

The above narration of material dates gives a semblance that the present petition was seasonably filed. However, the records show that petitioners should have reckoned the 15-day period to appeal from the receipt of the denial of the Manifestation and Motion to Stay Execution of Judgment, and not from their receipt of the denial of the Motion for Reconsideration. Having failed to do so, petitioners' right to appeal by *certiorari* lapsed as early as March 9, 2008 when the assailed CA Decision became final and executory.

Petitioners' Manifestation and Motion to Stay Execution of Judgment is, in actuality, a motion for reconsideration of the CA Decision. The said manifestation and motion so alleged:

> 10. In light of the foregoing, **respondents are constrained to bring the matter of supervening event to the attention of this Honorable Court and likewise in the manner of a motion for reconsideration, by way of modification of the DECISION**, if the same may be deemed proper and allowed and favorably considered, for the Honorable Court to so hold that the execution of the judgment dated August 29, 2007 no longer necessary, as there appears NO MORE VALID GROUND TO EJECT respondents from the leased premises or otherwise so hold that respondents are at the present time in lawful occupation of leased premises;[64] (Emphasis supplied.)

Hence, contrary to the allegation of respondent-spouses and the finding of the CA, petitioners filed a motion for reconsideration of the CA Decision, albeit in the guise of a

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

[64] CA *rollo*, p. 202.

"Manifestation and Motion to Stay Execution of Judgment." In fact, the relief prayed for by petitioners in this manifestation and motion is the same relief obtained once a motion for reconsideration is filed on time. Rule 52, Section 4 of the Rules of Court provides that generally, a motion for reconsideration filed on time stays the execution of the judgment sought to be reconsidered. It thus baffles us why petitioners captioned their motion as a "Manifestation and Motion to Suspend Execution of Judgment" when the effect sought is one and the same — to stay the execution of judgment. This carelessness only brought confusion to respondent-spouses and the CA.

Since the Manifestation and Motion to Stay Execution of Judgment is a motion for reconsideration of the CA Decision, petitioners' receipt of the resolution denying it triggers the running of the 15-day period within which to file an appeal.[65] Petitioners received a copy of the February 20, 2008 Resolution on February 22, 2008. Thus, counting 15 days from receipt, petitioners had only until March 8, 2008[66] to file a petition for review.

On March 7, 2008, however, petitioners filed a Motion for Reconsideration of the February 20, 2008 Resolution instead. This motion for reconsideration partakes of the nature of a *second* motion for reconsideration. In *Tagaytay City v. Sps. De Los Reyes*,[67] we ruled that a motion for reconsideration, even if it was *not* designated as a second motion for reconsideration, is a disguised second motion for reconsideration if it is merely a reiteration of the movant's earlier arguments.[68] Here, petitioners' Motion for Reconsideration is just that — a mere rehash of the arguments raised in their earlier Manifestation and Motion to

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[65] Under Rule 45, Section 2 of the Rules of Court, the petition for review should be filed within 15 days from notice of judgment appealed from or from notice of the denial of petitioner's motion for new trial or reconsideration.

[66] 2008 is a leap year. Counting 15 days from February 22, 2008, the last day for filing a petition for review before the Court is March 8, 2008.

[67] Resolution, G.R. No. 166679, January 27, 2010.

[68] *Id.*

Stay Execution of Judgment, which we found previously to be their (first) motion for reconsideration.

The filing of a second motion for reconsideration is prohibited under Rule 52, Section 2 of the 1997 Rules of Civil Procedure, as amended[69] and the prevailing 1999 Internal Rules of the Procedure of the CA (IRCA).[70] Being a prohibited pleading, a second motion for reconsideration does not have any legal effect and does not toll the running of the period to appeal.[71]

In *Securities and Exchange Commission v. PICOP Resources, Inc.*,[72] we explained why the period to appeal should not be reckoned from the denial of a second motion for reconsideration:

> To rule that finality of judgment shall be reckoned from the receipt of the resolution or order denying the second motion for reconsideration would result to an absurd situation whereby courts will be obliged to issue orders or resolutions denying what is a prohibited motion in the first place, in order that the period for the finality of judgments shall run, thereby, prolonging the disposition of cases. Moreover, such a ruling would allow a party to forestall the running of the period of finality of judgments by virtue of filing a prohibited pleading; such a situation is not only illogical but also unjust to the winning party.
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> **The same principle is likewise applicable by analogy in the determination of the correct period to appeal. Reckoning the period from the denial of the second motion for reconsideration will result in the same absurd situation where the courts will be obliged**

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[69] Rule 52, Section 2. *Second Motion for Reconsideration*. — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

[70] Rule 13, Section 3. *Second Motion for Reconsideration*. — No second motion for reconsideration from the same party shall be entertained. However, if the decision or resolution is reconsidered or substantially modified, the party adversely affected may file a motion for reconsideration within fifteen (15) days from notice.

[71] *Securities and Exchange Commission v. PICOP Resources, Inc*., G.R. No. 164314, September 26, 2008, 566 SCRA 451, 468, citing *Land Bank of the Philippines v. Ascot Holdings and Equities, Inc.,* G.R. No. 175163, October 19, 2007, 537 SCRA 396, 405.

[72] G.R. No. 164314, September 26, 2008, 566 SCRA 451.

**to issue orders or resolutions denying a prohibited pleading in the first place.**[73] (Emphasis Supplied.)

An appeal is not a matter of right, but is one of sound judicial discretion. It may only be availed of in the manner provided by the law and the rules.[74] A party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding.[75]

**Considering that petitioners reckoned the period to appeal on the date of notice of the denial of the second motion for reconsideration on July 7, 2008, instead of the date of notice of the denial of the first motion for reconsideration on February 22, 2008, the present petition filed only on August 28, 2008 is evidently filed out of time. The petition, being 173 days late, renders the CA Decision final and executory. Thus, we do not have jurisdiction to pass upon the petition.**

Our ruling in *Tagle v. Equitable PCI Bank*[76] is illustrative:

In the case at bar, the Court of Appeals dismissed the petition of petitioner Alfredo in CA-G.R. SP No. 90461 by virtue of a *Resolution* dated 6 September 2005. Petitioner Alfredo's Motion for Reconsideration of the dismissal of his petition was denied by the appellate court in its *Resolution* dated 16 February 2006. Petitioner Alfredo thus had 15 days from receipt of the *16 February 2006 Resolution* of the Court of Appeals within which to file a petition

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[73] *Id.* at 467-468, citing *Dinglasan, Jr. v. Court of Appeals,* G.R. No. 145420, September 19, 2006, 502 SCRA 253, 265.

[74] *Indoyon, Jr. v. Court of Appeals,* G.R. No. 193706, March 12, 2013, 693 SCRA 201, 211-212, citing *Muñoz v. People*, G.R. No. 162772, March 14, 2008, 548 SCRA 473.

[75] *Rivelisa Realty, Inc. v. First Sta. Clara Builders Corporation, Resolution*, G.R. No. 189618, January 15, 2014, 713 SCRA 618, 626, citing *Building Care Corporation/Leopard Security & Investigation Agency v. Macaraeg*, G.R. No. 198357, December 10, 2012, 687 SCRA 643, 650, also citing *Ocampo v. Court of Appeals (Former Second Division)*, G.R. No. 150334, March 20, 2009, 582 SCRA 43, 49.

[76] G.R. No. 172299, April 22, 2008, 552 SCRA 424.

for review. The reckoning date from which the 15-day period to appeal shall be computed is the date of receipt by petitioner Alfredo of the *16 February 2006 Resolution* of the Court of Appeals, and not of its *11 April 2006 Resolution* denying petitioner Alfredo's second motion for reconsideration, since the second paragraph of Sec. 5, Rule 37 of the Revised Rules of Court is explicit that a second motion for reconsideration shall not be allowed. **And since a second motion for reconsideration is not allowed, then unavoidably, its filing did not toll the running of the period to file an appeal by *certiorari*. Petitioner Alfredo made a critical mistake in waiting for the Court of Appeals to resolve his second motion for reconsideration before pursuing an appeal.**

**Another elementary rule of procedure is that perfection of an appeal within the reglementary period is not only mandatory but also jurisdictional. For this reason, petitioner Alfredo's failure to file this petition within 15 days from receipt of the 16 February 2006 Resolution of the Court of Appeals denying his first Motion for Reconsideration, rendered the same final and executory, and deprived us of jurisdiction to entertain an appeal thereof.**[77] (Emphasis supplied.)

While there are instances when we relax the application of procedural rules, the present petition is not one of them. Liberal application of the rules is an exception rather than the rule. In this case, petitioners failed to address the issue of finality of the CA Decision when it was raised in respondent Mena's Comment to the Manifestation and Motion to Stay Execution in the CA. Upon the denial of the manifestation and motion due to finality of the CA Decision, petitioners again ignored the issue of finality in their Motion for Reconsideration. Up until respondent-spouses' Comment before us, which again alleged the finality of the CA Decision, petitioners continued to be mum on the issue. Petitioners' silence as to the timeliness of their appeal is suspect. Thus, in the absence of exceptional circumstances and effort on the part of petitioners to justify the liberal application of the rules, we are constrained to deny the petition.

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[77] *Id.* at 445-446.

**Nevertheless, even discounting the above procedural defect, we still find the present petition unmeritorious.**

***The Execution of the Lease Contract is not a Supervening Event***

The assailed CA Decision was promulgated on August 29, 2007, and petitioners received notice of it on September 4, 2007.[78] The CA Decision ordered petitioners to vacate the property on the ground of respondent-spouses' legitimate need of the premises and expiration of the lease. On September 10, 2007, petitioners entered into a 10-year lease contract with Roberto involving the property.[79]

Consequently, petitioners allege that the execution of the lease contract lent legitimacy to their occupation of the property, such that the CA Decision is now mooted and should no longer be enforced because to do so would be inequitable. Petitioners insist that the lease contract constitutes a supervening event justifying the stay of the CA Decision.[80]

Petitioners' contentions are untenable. A supervening event refers to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time.[81] Here, the lease contract was executed after the CA Decision was promulgated but *before* it attained finality. In fact, petitioners executed the lease contract just six days after they received the adverse ruling of the CA.

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[78] Petition, *rollo*, p. 11.

[79] *Id.* at 17.

[80] *Id.* at 18.

[81] *Government Service Insurance System v. Group Management Corporation*, G.R. Nos. 167000 & 169771, June 8, 2011, 651 SCRA 279, 306, citing *Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, November 12, 2002, 391 SCRA 370, 387-388.

To our mind, instead of a supervening event, the execution of the lease contract partakes of the nature of a compromise. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced.[82] It is an agreement between two or more persons, who, for the purpose of preventing or putting an end to a lawsuit, adjust their difficulties by mutual consent in the manner which they agree on, and which each party prefers over the hope of gaining but balanced by the danger of losing.[83] In the case before us, petitioners claim that they executed the lease contract before notice of the CA Decision as an "amicable settlement of the issues with reference to occupancy of the subject property."[84] Thus, petitioners' intention to end the litigation by virtue of a compromise is evident.

A compromise may be entered into at any stage of the case — pending trial, on appeal and even after finality of judgment.[85] Hence, petitioners may enter into a compromise with the respondent-spouses, even after the CA Decision was rendered. However, the validity of the agreement is determined by compliance with the requisites and the principles of contracts, not by when it was entered into.[86] Unfortunately for petitioners, the compromise that they effected is wanting of one of the essential requisites[87] of a valid and binding compromise —

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[82] CIVIL CODE OF THE PHILIPPINES, Art. 2028.

[83] *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, G.R. No. 126745, July 26, 1999, 311 SCRA 143, 154, citing *Rovero v. Amparo*, 91 Phil. 228 (1952).

[84] Manifestation and Motion to Stay Execution of the Judgment dated August 29, 2007, CA *rollo*, p. 199.

[85] See *Magbanua v. Uy,* G.R. No. 161003, May 6, 2005, 458 SCRA 184, 193, citing *Jesalva v. Bautista and Premiere Productions, Inc.*, 105 Phil. 348 (1959).

[86] *Magbanua v. Uy*, G.R. No. 161003, May 6, 2005, 458 SCRA 184, 195.

[87] The requisites of a valid compromise are as follows: (1) the consent of the parties to the compromise, (2) an object certain that is the subject matter of the compromise, and (3) the cause of the obligation that is established. (*Magbanua v. Uy, supra*, citing Article 1318 of the Civil Code.)

consent of all the parties in the case. We have consistently ruled that a compromise agreement cannot bind a party who did not voluntarily take part in the settlement itself and gave *specific individual consent*.[88]

It is undisputed that only Roberto entered into a lease contract with petitioners. Mena did not sign it, but on the contrary, denounces its execution as being done in evident bad faith and without authority from her as the sole owner of the property. Considering that Mena did not participate in the execution of the lease contract, the compromise is not binding on her.

In addition, the compromise is also not valid even between petitioners and Roberto because the records show that the land in question is indeed a paraphernal property of Mena. Petitioners themselves admitted in their Answer[89] and Position Paper[90] before the MeTC that only Mena is the registered owner of the property. Estoppel therefore lies against them. Petitioners cannot now argue before us that the property is a conjugal property of the respondent-spouses, such that only Roberto's consent is necessary for the effectivity of the lease. Without an authorization showing that Roberto is acting on behalf of Mena, he has no right and power to enter into a lease contract involving Mena's exclusive property.

Besides, even assuming that the property is conjugally owned by respondent-spouses, this does not bestow upon Roberto the power to enter into a lease contract without the consent of his wife. We have explained in *Roxas v. Court of Appeals*,[91] that consent of the wife is required for lease of a conjugal realty

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[88] *Philippine Journalists, Inc. v. National Labor Relations Commission*, G.R. No. 166421, September 5, 2006, 501 SCRA 75, 93, citing *Galicia v. NLRC (Second Division)*, G.R. No. 119649, July 28, 1997, 276 SCRA 381. See also *General Rubber and Footwear Corp. v. Drilon*, G.R. No. 76988, January 31, 1989, 169 SCRA 808 and *Republic v. National Labor Relations Commission,* G.R. No. 108544, May 31, 1995, 244 SCRA 564.

[89] See paragraph 1, records, p. 10.

[90] See Statement of Facts, records, p. 165.

[91] G.R. No. 92245, June 26, 1991, 198 SCRA 541.

for a period of more than one year, such lease being considered a conveyance and encumbrance under the provisions of the Civil Code.[92]

***Respondent-Spouses Complied with Section 5 (c) of BP 877***

The controversy revolves on whether respondent-spouses satisfied the requisites of Section 5 (c) of BP 877 as a ground for judicial ejectment. To recapitulate, the requisites are:

*(1)* the owner's/lessor's legitimate need to repossess the leased property for his own personal use or for the use of any of his immediate family;

*(2)* **the owner/lessor does not own any other available residential unit within the same city or municipality;**

*(3)* **the lease for a definite period has expired;**

*(4)* **there was formal notice at least three (3) months prior to the intended date to repossess the property;** and

*(5)* the owner must not lease or allow the use of the property to a third party for at least one year.[93] (Emphasis supplied)

The second, third and fourth requisites are the ones contested in this case. The RTC found that respondent-spouses have other residential units within Pasig City. It also adjudged that the verbal lease between the parties does not have a period and the 3-month notice requirement was not complied with.

We disagree with the RTC and affirm the CA.

*First*, while it is admitted by respondent-spouses that they have other residential units in Pasig City, they were not available because they were occupied by tenants who pay their rentals promptly.[94] The keyword in the second requisite of Section 5 (c) is the word "available." The right of respondent-spouses to

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[92] *Id.* at 547.

[93] *Dula v. Maravilla*, *supra* note 41 at 257.

[94] Plaintiff's Position Paper, records, pp. 73-76.

eject petitioners cannot be negated by the fact alone that the former have other residential units in Pasig City. The said properties must be "available." Our ruling in *Roxas v. Intermediate Appellate Court*[95] is enlightening, thus:

> It is important to stress that even assuming any of petitioners own other residential units, what the law requires is that the same is an *available residential unit*, for the use of such owner/lessor or the immediate member of his family. **Thus even if an owner/lessor owns another residential unit, if the same is not available as for example the same is occupied or it is not suitable for dwelling purposes, it is no obstacle to the ejectment of a tenant on the ground that the premises is needed for use of the owner or immediate member of his family.**[96] (Emphasis supplied.)

Respondent-spouses did not choose to eject petitioners arbitrarily and unreasonably. They asserted that among their tenants, petitioners are delinquent in their rental payments. We cannot fault respondent-spouses in choosing their other tenants, who are in good standing, over petitioners.

*Second*, the lease between respondent-spouses and petitioners, although merely verbal, is deemed to be one with a definite period which expires at the end of each month. The lease is on a month-to-month basis because the rentals are paid monthly. In this regard, we cite our ruling in *Arquelada v. Philippine Veterans Bank*,[97] to wit:

> The question now is, has the verbal contract of lease between petitioners and the Bank expired in order to call for the ejectment of the latter from the premises in question? The Court rules in the affirmative.
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> It is admitted that no specific period for the duration of the lease was agreed upon between the parties. **Nonetheless, payment of the stipulated rents were made on a monthly basis and, as such, the period of lease is considered to be from month to month in**

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[95] G.R. Nos. 74279 & 74801-03, January 20, 1988, 157 SCRA 166.

[96] *Id.* at 175.

[97] G.R. No. 139137, March 31, 2000, 329 SCRA 536.

**accordance with Article 1687 of the Civil Code. Moreover, a lease from month-to-month is considered to be one with a definite period which expires at the end of each month upon a demand to vacate by the lessor.**[98] (Citations omitted, emphasis supplied.)

*Third*, respondent-spouses complied with the requirement of 3-month prior notice. Petitioners do not dispute that they were verbally informed of respondent-spouses' need of the property as early as March 2000. In fact, *barangay* conciliation meetings were held regarding the matter. Petitioners, however, insist that the reckoning period for the 3-month notice should be counted from their receipt on June 15, 2000 of the letter to vacate. Consequently, they argue that they were given only 28 days from June 15 to July 13, 2000 to vacate the property.

We reject petitioners' contention.

The "formal notice" requirement under BP 877 does not refer to a written notice only. In the case of *Garcia v. Court of Appeals*,[99] we reckoned compliance with the 3-month notice requirement from his verbal demand to vacate, *viz*:

x x x [E]ven assuming *arguendo* that the appellate court's premise is correct, petitioner did give notice on his own behalf. The trial court found that soon after the sale of the property to petitioner, or on October 10, 1979, the latter wrote to private respondent that he vacate the premises. **After this and other subsequent demands were ignored, he again made a demand on August 7, 1982 informing private respondent that he wished to build his house on the property.** After this last demand was again ignored, he brought the matter before the Barangay Chairman who, on September 19, 1982, sent a summons to private respondent, who, not only ignored it but in addition, refused to accept it when served upon him. **Petitioner finally filed an ejectment suit before the MTC on December 7, 1982, or four months after his verbal demand on August 7, 1982. Thus, even disregarding the previous demands soon after the sale, petitioner had complied with the requirement of three-month notice.**[100] (Emphasis supplied.)

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[98] *Id.* at 553-554.

[99] G.R. No. 88632, March 22, 1993, 220 SCRA 264.

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

All told, the present petition is without merit both on technical and substantive grounds.

**WHEREFORE,** the Petition is **DENIED**. The Decision and Resolution of the Court of Appeals dated August 29, 2007 and July 7, 2008, respectively, are hereby **AFFIRMED**.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, Perez,* and *Reyes, JJ.,* concur.

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**THIRD DIVISION**

[G.R. No. 183934. July 20, 2016]

**ERNESTO GALANG and MA. OLGA JASMIN CHAN,** *petitioners, vs.* **BOIE TAKEDA CHEMICALS, INC. and/ or KAZUHIKO NOMURA,** *respondents.*

**SYLLABUS**

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; DEFINED; WHEN IT EXISTS.—** Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear as if it were not." It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in pay may be attendant, constructive dismissal may still exist when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign. Under these two definitions, what is essentially

lacking is the voluntariness in the employee's separation from employment. In this case, petitioners were neither demoted nor did they receive a diminution in pay and benefits. Petitioners also failed to show that employment is rendered impossible, unreasonable or unlikely.

2. **ID.; ID.; ID.; ID.; THE MANAGEMENT HAS EXCLUSIVE PREROGATIVES TO DETERMINE THE QUALIFICATIONS AND FITNESS OF WORKERS FOR HIRING AND FIRING, PROMOTION OR REASSIGNMENT, AND THE EMPLOYER'S EXERCISE OF MANAGEMENT PREROGATIVES, WITH OR WITHOUT REASON, DOES NOT PER SE CONSTITUTE UNJUST DISCRIMINATION, UNLESS THERE IS A SHOWING OF GRAVE ABUSE OF DISCRIMINATION.—** Our labor laws respect the employer's inherent right to control and manage effectively its enterprise and do not normally allow interference with the employer's judgment in the conduct of his business. Management has exclusive prerogatives to determine the qualifications and fitness of workers for hiring and firing, promotion or reassignment. It is only in instances of unlawful discrimination, limitations imposed by law and collective bargaining agreement can this prerogative of management be reviewed. The reluctance to interfere with management's prerogative in determining who to promote all the more applies when we consider that the position of National Sales Director is a managerial position. Managerial positions are offices which can only be held by persons who have the trust of the corporation and its officers. The promotion of employees to managerial or executive positions rests upon the discretion of management. Thus, we have repeatedly reminded that the Labor Arbiters, the different Divisions of the NLRC, and even courts, are not vested with managerial authority. The employer's exercise of management prerogatives, with or without reason, does not *per se* constitute unjust discrimination, unless there is a showing of grave abuse of discretion.

3. **ID.; ID.; ID.; ID.; THE CIRCUMSTANCES CONTEMPLATED IN CONSTRUCTIVE DISMISSAL CASES ARE CLEAR ACTS OF DISCRIMINATION, INSENSIBILITY OR DISDAIN WHICH NECESSARILY PRECEDES THE APPARENT "VOLUNTARY" SEPARATION FROM WORK, BUT IF THE SAME HAPPENED AFTER THE**

**FACT OF SEPARATION, IT COULD NOT BE SAID TO HAVE CONTRIBUTED TO EMPLOYEE'S DECISION TO INVOLUNTARY RESIGN OR TO RETIRE.—** The other acts of discrimination complained of by petitioners refer to post-employment matters, or those that transpired after their retirement. These include payment of alleged "lesser" retirement package, and the abolition of the positions of Regional Sales Manager. These events transpired only after they voluntary availed of the early retirement. We stress, however, that the circumstances contemplated in constructive dismissal cases are clear acts of discrimination, insensibility or disdain which necessarily *precedes* the apparent "voluntary" separation from work. If they happened after the fact of separation, it could not be said to have contributed to employee's decision to involuntary resign, or in this case, retire.

4. **ID.; ID.; ID.; ID.; IN CONSTRUCTIVE DISMISSAL CASES, THE EMPLOYEE HAS THE BURDEN TO PROVE FIRST THE FACT OF DISMISSAL BY SUBSTANTIAL EVIDENCE, FOR ONLY WHEN THE DISMISSAL IS ESTABLISHED THAT THE BURDEN SHIFTS TO THE EMPLOYER TO PROVE THAT THE DISMISSAL WAS FOR JUST AND/OR AUTHORIZED CAUSE.—** It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity. However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence. Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. The logic is simple—if there is no dismissal, there can be no question as to its legality or illegality.

5. **ID.; ID.; ID.; RETIREMENT BENEFITS; TO CONSTITUTE A REGULAR COMPANY PRACTICE, THE EMPLOYEE MUST PROVE BY SUBSTANTIAL EVIDENCE THAT THE BENEFITS ARE REGULARLY, VOLUNTARILY AND DELIBERATELY GRANTED BY THE EMPLOYER OVER A CONSIDERABLE PERIOD OF TIME KNOWING FULLY WELL THAT THE EMPLOYEES ARE NOT COVERED BY ANY PROVISION OF THE LAW OR AGREEMENT REQUIRING PAYMENT THEREOF.—** The

entitlement of employees to retirement benefits must specifically be granted under existing laws, a collective bargaining agreement or employment contract, or an established employer policy. Based on both parties' evidence, petitioners are not covered by any agreement. There is also no dispute that petitioners received more than what is mandated by Article 287 of the Labor Code. Petitioners, however, claim that they should have received a larger pay because BTCI has given more than what they received to previous retirees. In essence, they claim that they were discriminated against because BTCI did not give them the package of 150% of monthly salary for every year of service on top of the normal retirement package. In *Vergara v. Coca-Cola Bottlers Philippines, Inc.*, we explained that the burden of proof that the benefit has ripened into company practice, *i.e.*, giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately, rests with the employee: To be considered as a regular company practice, **the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately**. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised *in order to constitute voluntary employer practice*. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. **It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof**. In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time. We agree with the CA when it ruled that "[t]his concession given to such an employee was not proved (*sic*) to be company practice or policy such that petitioners can demand of it over and above what has been specified in the collective bargaining agreement."

6. **ID.; ID.; ID.; ID.; ID.; A YEAR CANNOT BE CONSIDERED LONG ENOUGH TO CONSTITUTE THE GRANT OF RETIREMENT BENEFITS TO THE EMPLOYEES AS COMPANY PRACTICE.—** To prove that their claim on the additional grant of 150% of salary, petitioners presented evidence showing that Anita Ducay, Rolando Arada, Marcielo Rafael,

and Sarmiento, received significantly larger retirement benefits. However, the cases of Ducay, Arada, and Rafael cannot be used as precedents to prove this specific company practice because these employees were not shown to be similarly situated in terms of rank, nor are the applicable retirement packages corresponding to their ranks alike. Also, these employees, including Sarmiento, all retired in the same year of 2001, or only within a one-year period. Definitely, a year cannot be considered long enough to constitute the grant of retirement benefits to these employees as company practice.

**APPEARANCES OF COUNSEL**

*Ludivina Ubina* for petitioners.
*Castillo Laman Tan Pantaleon & San Jose* for respondents.

**D E C I S I O N**

**JARDELEZA, *J.*:**

This is a petition for review on *certiorari*[1] under Rule 45 of the Revised Rules of Court filed by Ernesto M. Galang and Ma. Olga Jasmin Chan (petitioners) from the Court of Appeals' (CA) Decision[2] dated February 26, 2008 (CA Decision) and the Resolution[3] dated July 28, 2008 (collectively, Assailed Decision) in CA-G.R. SP No. 96861. In the Assailed Decision, the CA affirmed the National Labor Relations Commission (NLRC) Decision[4] dated March 7, 2006 reversing the Labor Arbiter's ruling that petitioners were illegally dismissed, *viz*:

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[1] *Rollo*, pp. 12-76.

[2] *Id.* at 78-93. Penned by Associate Justice Enrico A. Lanzanas, with the concurrence of Associate Justices Remedios Salazar-Fernando and Rosalinda Asuncion-Vicente.

[3] *Id.* at 95-98. Penned by Associate Justice Rosalinda Asuncion-Vicente, with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Rebecca De Guia-Salvador.

[4] *Id.* at 137-156.

**WHEREFORE**, premises considered, the instant Petition is hereby **DENIED**. Accordingly, the assailed March 7, 2006 Decision of the NLRC as well as the October 25, 2006 Resolution denying Petitioners' Motion for Reconsideration are **AFFIRMED**.

**SO ORDERED**.[5] (Emphases in the original.)

## Statement of Facts

Respondent pharmaceutical company Boie Takeda Chemicals, Inc. (BTCI) hired petitioners Ernesto Galang and Ma. Olga Jasmin Chan in August 28, 1975 and July 20, 1983, respectively.[6] Through the years, petitioners rose from the ranks and were promoted to Regional Sales Managers in 2000. Petitioners held these positions until their separation from BTCI on May 1, 2004.[7]

As Regional Sales Managers, they belong to the sales department of BTCI. They primarily managed regional sales budget and target, and were responsible for market share and company growth within their respective regions. Within the organizational hierarchy, they reported to the National Sales Director.[8] In 2002, when the National Sales Director position became vacant (after the retirement of Melchor Barretto), petitioners assumed and shared (with the general manager) the functions and responsibilities of this higher position, and reported directly to the General Manager.[9]

In February 2003, the new General Manager, Kazuhiko Nomura (Nomura), asked petitioners to apply for the position of National Sales Director.[10] Simultaneously, Nomura also asked Edwin Villanueva (Villanueva) and Mimi Escarte, both Group Product Managers in the marketing department, to apply for the position of Marketing Director. All four employees submitted

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[5] *Id.* at 92.

[6] *Id.* at 80.

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

[8] *Id.* at 79.

[9] *Id.* at 139.

[10] *Id.* at 79.

themselves to interviews with the management. In the end, Nomura hired an outsider from Novartis Company as Marketing Director, while the position of National Sales Director remained vacant.[11]

Later, however, petitioners were informed that BTCI promoted Villanueva as National Sales Director effective May 1, 2004.[12] BTCI explained that the appointment was pursuant to its management prerogative, and that it arrived at such decision only "after careful assessment of the situation, the needs of the position and the qualifications of the respective candidates."[13] The promotion of Villanueva as the National Sales Director caused ill-feelings on petitioners' part.[14] They believed that Villanueva did not apply for the position; has only three years of experience in sales; and was reportedly responsible for losses in the marketing department.[15] Petitioners further resented Villanueva's appointment because they heard that the appointment was made only because he threatened to leave the office along with the company's top cardio-medical doctors.[16]

After Villanueva's promotion, petitioners claimed that Nomura threatened to dismiss them from office if they failed to perform well under the newly appointed National Sales Director.[17] This prompted petitioners to inquire if they could avail of early retirement package due to health reasons. Specifically, they requested Nomura if they could avail of the early retirement package of 150% plus 120% of monthly salary for every year of service tax free, and full ownership of service vehicle tax free.[18]

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[11] *Id.*

[12] *Rollo*, p. 80.

[13] *Id.* at 81.

[14] *Id.* at 80.

[15] *Id.* at 23.

[16] *Id.* at 80.

[17] *Id.*

[18] *Rollo*, pp. 80, 140.

They claimed that this is the same retirement package given to previous retirees namely, former Regional Sales Director Jose Sarmiento, Jr. (Sarmiento), and former National Sales Director Melchor Barretto.[19] Nomura, however, insisted that such retirement package does not exist[20] and Sarmiento's case was exceptional since he was just a few years shy from the normal retirement age.[21]

On April 28, 2004, petitioners intimated their intention to retire in a joint written letter of resignation[22] dated April 28, 2002 (*sic*) to Nomura, effective on April 30, 2004. Thereafter, petitioners received their retirement package and other monetary pay from BTCI. Chan received two checks[23] in the total amount of ₱2,187,236.64[24] computed as follows:

| | | |
|---|---|---|
| 1) | Retirement pay (₱70,000.00 x 120% x 21 years) = | ₱1,764,000.00 |
| 2) | Salaries from May to December 2004 (₱70,000.00 x 8 mos.) = | ₱560,000.00 |
| 3) | Allowances (from May to December 2004) = | ₱69,328.00 |
| 4) | Rice Subsidy (April-December) = | ₱6,000.00 |
| 5) | Conversion of Leave Credits (138 days) = | ₱461,833.00 |
| 6) | 13th month pay (pro-rata) = | ₱35,000.00 |
| [Gross Amount] | | ₱2,896,161.00 |
| | | |
| Less: | Accountabilities | ₱595,952.76 |
| | Taxes | ₱110,971.00 |
| [Net Amount] | | ₱2,187,236.64[25] |

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

[20] *Id.*

[21] CA *rollo*, p. 370.

[22] *Rollo*, pp. 81, 321-322.

[23] *Id.* at 81-82, 323-324.

[24] *Id.* at 81-82, 325. Chan received two checks from BTCI on May 13, 2004.

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

Galang received checks[26] in the total amount of ₱3,754,306.56[27] computed as follows:

| | |
|---|---|
| 1) Retirement Pay (₱70,000 x 160% x 29 years) = | ₱3,248,000.00 |
| 2) Salaries [from] May [to] Dec. 2004 = | ₱560,000.00 |
| 3) Allowances (May to December 2004) = | ₱69,328.00 |
| 4) Rice Subsidy (April to December) = | ₱6,000.00 |
| 5) Conversion of Leave Credits (35 days) = | ₱117,131.00 |
| 6) 13th month pay (pro-rata) = | ₱35,000.00 |
| Gross Amount | ₱4,035,459.00 |
| Less: Accountabilities | ₱275,553.63 |
| Taxes | ₱5,598.81 |
| [Net Amount] | ₱3,754,306.56[28] |

Upon petitioners' retirement, the positions of Regional Sales Manager were abolished, and a new position of Operations Manager was created.[29]

On October 20, 2004, petitioners filed the complaint for constructive dismissal and money claims before the NLRC Regional Arbitration Branch.[30]

In a Decision dated May 16, 2005 (LA Decision),[31] the Labor Arbiter ruled that petitioners were constructively dismissed.[32] The Labor Arbiter explained that petitioners were forced to retire because Villanueva's appointment constituted an abuse of exercise of management prerogative; and that subsequent events, such as the abolition of the positions of Regional Sales Managers and the creation of the position of the Operations Manager show that petitioners' easing out from service were orchestrated. It also found that petitioners were discriminated

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[26] *Id.* at 82, 326-328.

[27] *Id.* at 82, 329.

[28] *Id.* at 82.

[29] *Id.* at 26, 225.

[30] *Id.* at 291.

[31] *Id.* at 99-122.

[32] *Id.* at 114.

as to their retirement package. The dispositive portion of the decision stated, thus:

WHEREFORE, premises considered, judgment is hereby rendered, declaring complainants' dismissal from their employment to be illegal. Accordingly, respondents are jointly and severally liable:

1) To pay complainants the amounts opposite their respective names:

| | **Backwages** | **Separation Pay/ Differential Pay** | **Salary Differentials** |
|---|---|---|---|
| E. Galang | ₱398,854.16 | 189,000.00 | 830,000.00 |
| | | 3,045,000.00 | 680,000.00 |
| Ma. OJ Chan | 398,954.16 | 189,000.00 | 830,000.00 |
| | | 2,205,000.00 | 680,000.00 |

2) To pay complainants, the amount ₱227,164.10 for Olga Chan and the sum of ₱27,374.85 for Ernesto Galang, representing the refund of the deducted car loan;

3) To pay complainants the amount of ₱500,000.00 each, representing moral damages, and the amount of ₱500,000.00 each, as for exemplary damages;

4) To pay complainant the amount equivalent to ten (10%) percent of the total judgment award, as and for attorney's fees.

SO ORDERED.[33]

On June 30, 2005, BTCI appealed the LA Decision with the NLRC.[34]

Petitioners allegedly received a Notice of Decision[35] dated March 10, 2006 from the NLRC. The notice informed petitioners that a decision was promulgated by the NLRC on February 7,

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[33] *Id.* at 122.

[34] *Id.* at 291.

[35] *Id.* at 136.

2006. The attached decision in the notice, however, was dated March 7, 2006. The decision dated March 7, 2006[36] (March Decision) ***reversed and set aside*** the LA Decision, and dismissed the complaint. In said decision, the NLRC ruled that petitioners failed to prove that they were constructively dismissed.

Petitioners filed a motion to declare the March Decision null and void by way of motion for reconsideration[37] dated March 22, 2006. Petitioners alleged that prior to the Notice of Decision, they personally received a decision allegedly promulgated on February 7, 2006[38] (February Decision) which ***affirmed*** the LA Decision, but with modification as to the amount of moral and exemplary damages. Petitioners pointed out that the March Decision: (1) lacked one signature in page 19; (2) contained two different specimens signature for Commissioner Gacutan; (3) had pages which do not contain the initials of the one preparing it; (4) was printed in higher quality paper; (4) merely lifted the arguments of BTCI in contrast to the NLRC's February Decision which directly reviewed the findings of the Labor Arbiter; and (5) was attached to a notice signed by merely a Labor Arbiter Associate, and not by the Executive Clerk of the Division. [39] Petitioners also reiterated that BTCI dismissed them under the guise of management prerogative, and that Villanueva's appointment as National Sales Director was an abuse of exercise of such prerogative. They also claimed that their departure from the office was not voluntary but was prompted by the circumstances after the BTCI preferred Villanueva's application over theirs.[40]

On October 25, 2006, the NLRC issued a Resolution[41] which denied petitioners' motion for reconsideration, and therefore

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[36] *Id.* at 137-156.

[37] *Id.* at 157-166; CA *rollo*, pp. 110-120.

[38] *Rollo*, pp. 123-135, 157-158.

[39] *Id.* at 158-160.

[40] *Id.* at 162-165.

[41] *Id.* at 203-208.

upheld the NLRC's March Decision. The NLRC clarified that the official decision is the March Decision, and that the February Decision cannot be considered as the official decision because it was merely a draft decision.

Petitioners filed a petition for *certiorari*[42] under Rule 65 of the Revised Rules of Court with the CA, which denied the petition in the Assailed Decision. The CA said that the "NLRC having thus chosen to uphold its Decision dated March 7, 2006 as the authentic one, this Court must therefore, consider the same as the version herein submitted for review."[43] The CA also found that the March Decision was more in tune with law and jurisprudence.[44] It reviewed and reassessed the facts and evidence on record and made a finding that the NLRC did not commit grave abuse of discretion.

Thus, petitioners filed before this Court a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court. They allege that the CA erred in sustaining the decision of the NLRC.

## The Arguments

Petitioners argue that they were constructively dismissed because of the acts of BTCI's General Manager Nomura. They claim that they were forced into resigning because instead of promoting them to the position of National Sales Directors, BTCI hired Villanueva who only had three years of service in the company, who has no background or experience in sales to speak of, and who was allegedly responsible for almost the bankruptcy of the company. They allege that Nomura threatened to dismiss them if they do not perform well under the newly-appointed National Sales Director.

Petitioners also argue that the retirement package given to them is lower compared to others who were holding the similar

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[42] CA *rollo*, pp. 2-24.

[43] *Rollo*, p. 87.

[44] *Id.* at 88.

position at the time of their retirement. By way of example, petitioners cite the case of one Sarmiento, who was promoted with them to the same position, and who opted for early retirement in 2001. Sarmiento allegedly received a more generous package of 150% of his monthly salary for every year of service on top of the 120% retirement package for his 22 years of service. Petitioners contend that this was the same retirement package given to other employees such as Anita Ducay, Marcielo Rafael, Rolando Arada, Sarmiento, and Melchor Barretto.[45]

For its part, BCTI claims that the complaint is only an attempt to extort additional benefits from the company.

BTCI denies having constructively dismissed petitioners. It argues that no constructive dismissal can occur because there was no movement or transfer of position or diminution of salaries or benefits. Neither was there any circumstance that would make petitioners' continued employment unreasonable or impossible.[46] The appointment of Villanueva was within the sphere of management's prerogatives, and was arrived at after careful consideration. It did not have any adverse effect on petitioners' positions as Regional Sales Managers. According to BTCI, petitioner's decision to retire was voluntary and of their own volition.[47]

As to the payment of retirement benefits, BTCI insists that petitioners have been paid according to the Collective Bargaining Agreement (CBA) between BTCI and BTCI Supervisory Union. Although petitioners are managers (and are not covered by the CBA), BTCI by practice grants the same retirement benefits to managers. BTCI admits that it gave Sarmiento additional financial assistance because of serious health problems, and because he was merely three years away from normal retirement. Other employees cited by petitioners all received retirement benefits computed on the CBA provisions.[48]

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[45] *Id.* at 58-60.

[46] *Id.* at 301.

[47] *Id.* at 287.

[48] *Id.* at 394-398.

**Issues**

Thus, the issues before this Court are the following:

I. Whether petitioners were constructively dismissed from service; and

II. Whether petitioners are entitled to a higher retirement package.

**Our Ruling**

We deny the petition.

In its Resolution dated October 25, 2006, the NLRC denied petitioners' motion for reconsideration, and declared the March Decision as the official decision. It ruled that the February Decision (in petitioners' possession) is merely a draft decision.[49] This Court recognizes that it is common practice that more than one decision may be drafted because more often, members of a collegiate body change their positions during deliberations.[50] This finding of the NLRC, coupled by the fact that the March Decision is complete in form and substance pursuant to Section 4(c) and Section 13 of Rule VII of the 2005 NLRC Rules of Procedure, cannot be characterized as an exercise of grave abuse of discretion amounting to lack or excess of jurisdiction. The issue of which between the two decisions is the correct one delves into the substantive arguments of the case, which the CA has already decided after review and reassessment of the facts and evidence of the entire records.

*I. Petitioners voluntarily retired from the service, thus were not constructively dismissed.*

Constructive dismissal has often been defined as a "dismissal in disguise" or "an act amounting to dismissal but made to appear

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[49] *Id.* at 205-206.

[50] See concurring opinion of Justice Hugo Gutierrez, Jr. in *People v. Caruncho, Jr.,* G.R. No. 57804, January 23, 1984, 127 SCRA 16, 48-49.

as if it were not."[51] It exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. In some cases, while no demotion in rank or diminution in pay may be attendant, constructive dismissal may still exist when continued employment has become so unbearable because of acts of clear discrimination, insensibility or disdain by the employer, that the employee has no choice but to resign.[52] Under these two definitions, what is essentially lacking is the voluntariness in the employee's separation from employment.

In this case, petitioners were neither demoted nor did they receive a diminution in pay and benefits. Petitioners also failed to show that employment is rendered impossible, unreasonable or unlikely.

Petitioners admitted that they have previously intended to retire and were actually the ones who requested to avail of an early retirement.[53] More, the circumstances which petitioners claim to have forced them into early retirement are not of such character that rendered their continued employment with BTCI as impossible.

Petitioners allege that Nomura appointed Villanueva in order to ease them out from the company. Petitioners claim that Villanueva was unqualified for the position compared to their experiences; that Villanueva did not apply for the position of National Sales Director; and that he lacked the experience for the job. Such arguments only affirm the NLRC and CA's finding that petitioners' resignation was prompted by their general disagreement with the appointment of Villanueva, and not by the acts of discrimination by the management.

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[51] See *Uniwide Sales Warehouse Club v. National Labor Relations Commission*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 236.

[52] *Verdadero v. Barney Autolines Group of Companies Transport, Inc.*, G.R. No. 195428, August 29, 2012, 679 SCRA 545, 555.

[53] *Rollo*, p. 23.

Our labor laws respect the employer's inherent right to control and manage effectively its enterprise and do not normally allow interference with the employer's judgment in the conduct of his business.[54] Management has exclusive prerogatives to determine the qualifications and fitness of workers for hiring and firing, promotion or reassignment.[55] It is only in instances of unlawful discrimination, limitations imposed by law and collective bargaining agreement can this prerogative of management be reviewed.[56]

The reluctance to interfere with management's prerogative in determining who to promote all the more applies when we consider that the position of National Sales Director is a managerial position. Managerial positions are offices which can only be held by persons who have the trust of the corporation and its officers.[57] The promotion of employees to managerial or executive positions rests upon the discretion of management.[58] Thus, we have repeatedly reminded that the Labor Arbiters, the different Divisions of the NLRC, and even courts, are not vested with managerial authority.[59] The employer's exercise of management prerogatives, with or without reason, does not *per se* constitute unjust discrimination, unless there is a showing of grave abuse of discretion.[60] In this case, there is none.

Petitioners did not present any evidence showing BTCI's adopted rules and policies laying out the standards of promotion

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[54] *Hongkong and Shanghai Banking Corporation Employees Union v. National Labor Relations Commission*, G.R. No. 125038, November 6, 1997, 281 SCRA 509, 519.

[55] *Id.*

[56] *Id.*

[57] *Bulletin Publishing Corporation v. Sanchez*, G.R. No. 74425, October 7, 1986, 144 SCRA 628, 641.

[58] *Id.*

[59] *National Federation of Labor Unions v. NLRC*, G.R. No. 90739, October 3, 1991, 202 SCRA 346, 353.

[60] *National Federation of Labor Unions v. NLRC, supra* at 355.

of an employee to National Sales Director. They did not present the qualification standards (which BTCI did not allegedly follow) needed for the position. Petitioners merely assumed that one of them was better for the job compared to Villanueva. Mere allegations without proof cannot sustain petitioners' claim. In any case, a perusal of Villanueva's resume shows that he has combined experiences in both sales and marketing.[61] The NLRC also found that an independent consulting agency, K Search Asia Consulting, was engaged by BTCI to determine who to appoint as National Sales Director.[62] The consulting agency recommended Villanueva to the position.[63] In the absence of any qualification standards that BTCI allegedly gravely abused to refuse to follow, we cannot substitute our own judgment on the qualifications of Villanueva.

Petitioners' allegation that Villanueva was appointed only because of the threats the latter made to management militates against their claim. If BTCI management was merely forced to appoint Villanueva, petitioners cannot claim that BTCI intentionally and maliciously orchestrated their easement from the company.

Petitioners cannot also argue that BTCI's caution to dismiss them if they do not perform well under the newly-appointed National Sales Director constituted a threat to their employment. This is merely a warning for them to cooperate with the new National Sales Director. Such warning is expected of management as part of its supervision and disciplining power over petitioners given their unwelcoming reactions to Villanueva's appointment.

The other acts of discrimination complained of by petitioners refer to post-employment matters, or those that transpired after their retirement. These include payment of alleged "lesser" retirement package, and the abolition of the positions of Regional Sales Manager. These events transpired only after they voluntary

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[61] *Rollo*, pp. 349-351.

[62] *Id.* at 184.

[63] *Id.*

availed of the early retirement. We stress, however, that the circumstances contemplated in constructive dismissal cases are clear acts of discrimination, insensibility or disdain which necessarily *precedes* the apparent "voluntary" separation from work. If they happened after the fact of separation, it could not be said to have contributed to employee's decision to involuntary resign, or in this case, retire.

It is true that in constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity.[64] However, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence.[65] Only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause.[66] The logic is simple — if there is no dismissal, there can be no question as to its legality or illegality.[67]

In *Portuguez v. GSIS Family Bank (Comsavings Bank)*,[68] we were confronted with the same facts where an employee who opted for voluntary retirement claimed that he was constructively dismissed. In that case, we ruled that it is the employee who has the *onus* to prove his allegation that his availment of the early voluntary retirement program was, in fact, done involuntarily:

> Again, we are not persuaded. We are not unaware of the statutory rule that in illegal dismissal cases, the employer has the *onus probandi* to show that the employee's separation from employment is not

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[64] *MZR Industries v. Colambot,* G.R. No. 179001, August 28, 2013, 704 SCRA 150, 157.

[65] *Id.*

[66] *Id.*

[67] *Id.*, citing *Philippine Rural Reconstruction Movement v. Pulgar*, G.R. No. 169227, July 5, 2010, 623 SCRA 244, 256.

[68] G.R. No. 169570, March 2, 2007, 517 SCRA 309.

motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. It bears stressing, however, that this legal principle presupposes that there is indeed an involuntary separation from employment and the facts attendant to such forced separation was clearly established.

This legal principle has no application in the instant controversy for as we have succinctly pointed above, petitioner failed to establish that indeed he was discriminated against and on account of such discrimination, he was forced to sever his employment from the respondent bank. What is undisputed is the fact that petitioner availed himself of respondent bank's early ***voluntary*** retirement program and accordingly received his retirement pay in the amount of ₱1.324 Million under such program. Consequently, the burden of proof will not vest on respondent bank to prove the legality of petitioner's separation from employment but aptly remains with the petitioner to prove his allegation that his availment of the early voluntary retirement program was, in fact, done involuntarily.

As we have explicitly ruled in *Machica v. Roosevelt Service Center, Inc.*:

> "The rule is that **one who alleges a fact has the burden of proving it**; thus, petitioners were burdened to prove their allegation that respondents dismissed them from their employment. **It must be stressed that the evidence to prove this fact must be clear, positive and convincing**. The rule that the employer bears the burden of proof in illegal dismissal cases finds no application here because the respondents deny having dismissed the petitioners."

Verily, petitioner did not present any clear, positive or convincing evidence in the present case to support his claims. Indeed, he never presented any evidence at all other than his own self-serving declarations. We must bear in mind the legal dictum that, "**he who asserts, not he who denies, must prove**."[69] (Citations omitted, emphases in the original.)

Here, records show that petitioners failed to establish the fact of their dismissal when they failed to prove that their decision to retire is involuntary. Consequently, no constructive dismissal can be found.

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[69] *Id.* at 324-325.

*II. Petitioners were not discriminated against in terms of their retirement package.*

The entitlement of employees to retirement benefits must specifically be granted under existing laws, a collective bargaining agreement or employment contract, or an established employer policy.[70] Based on both parties' evidence, petitioners are not covered by any agreement. There is also no dispute that petitioners received more than what is mandated by Article 287[71] of the Labor Code. Petitioners, however, claim that they should

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[70] *Kimberly-Clark Philippines, Inc. v. Dimayuga*, G.R. No. 177705, September 18, 2009, 600 SCRA 648, 653.

[71] Art. 287. *Retirement*. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however*, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (½) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

(Renumbered to Article 302 pursuant to Republic Act No. 10151.)

have received a larger pay because BTCI has given more than what they received to previous retirees. In essence, they claim that they were discriminated against because BTCI did not give them the package of 150% of monthly salary for every year of service on top of the normal retirement package.

In *Vergara v. Coca-Cola Bottlers Philippines, Inc.*,[72] we explained that the burden of proof that the benefit has ripened into company practice, *i.e.*, giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately, rests with the employee:

> To be considered as a regular company practice, **the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately**. Jurisprudence has not laid down any hard-and-fast rule as to the length of time that company practice should have been exercised in order to constitute voluntary employer practice. The common denominator in previously decided cases appears to be the regularity and deliberateness of the grant of benefits over a significant period of time. **It requires an indubitable showing that the employer agreed to continue giving the benefit knowing fully well that the employees are not covered by any provision of the law or agreement requiring payment thereof.** In sum, the benefit must be characterized by regularity, voluntary and deliberate intent of the employer to grant the benefit over a considerable period of time.[73] (Citations omitted, emphases supplied.)

We agree with the CA when it ruled that "[t]his concession given to such an employee was not proved (*sic*) to be company practice or policy such that petitioners can demand of it over and above what has been specified in the collective bargaining agreement."[74]

To prove that their claim on the additional grant of 150% of salary, petitioners presented evidence showing that Anita Ducay,[75]

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[72] G.R. No. 176985, April 1, 2013, 694 SCRA 273.

[73] *Id.* at 279-280.

[74] *Rollo*, p. 92.

[75] CA *rollo*, p. 332.

Rolando Arada,[76] Marcielo Rafael,[77] and Sarmiento,[78] received significantly larger retirement benefits. However, the cases of Ducay, Arada, and Rafael cannot be used as precedents to prove this specific company practice because these employees were not shown to be similarly situated in terms of rank, nor are the applicable retirement packages corresponding to their ranks alike. Also, these employees, including Sarmiento, all retired in the same year of 2001, or only within a one-year period. Definitely, a year cannot be considered long enough to constitute the grant of retirement benefits to these employees as company practice.

In fact, the affidavit[79] of Anita Ducay affirms BTCI's position that in practice, the CBA provisions govern the employees' retirement pay. And while it may also support petitioners' allegation that in some cases, a more generous package is given to retiring employees higher than that provided in the CBA, the affidavit candidly states that the retirement package given to Sarmiento, Melchor Barreto, Marcielo Rafael, and Rolando Arada was not in accordance with standard of merit or company practice.

It cannot therefore be disputed that petitioners already received the benefits as specified in the CBA between BTCI and BTCI Supervisory Union.[80] Petitioner Chan, for her 21 years of service,

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

[77] *Id.* at 123-124.

[78] *Rollo*, pp. 210-211.

[79] *Id.* at 273.

[80] *Id.* at 330. Section 2, Article XV, of the CBA provides:

**SECTION 2. RETIREMENT BENEFIT** — Retirement benefits in the form of percentage of Monthly [B]asic Salary shall be paid to regular employees upon completion of the following length of service:

| LENGTH OF SERVICE | RATE IN PERCENT OF THE BASIC PAY |
|---|---|
| 1. 5 TO 8 YEARS | 60% |
| 2. 9 TO 11 YEARS | 65% |
| 3. 12 TO 14 YEARS | 75% |
| 4. 15 TO 17 YEARS | 90% |
| 5. 18 TO 20 YEARS | 105% |
| 6. 21 TO 23 YEARS | 120% |
| 7. 24 TO 26 YEARS | 130% |
| 8. 27 and OVER | 160% |

received a total of ₱1,764,000.00 as retirement benefits following the formula of ₱70,000.00 x 120% x 21 years. Petitioner Galang, for his 29 years of service, received a total of ₱3,248,000.00 as retirement benefits following the formula of ₱70,000.00 x 160% x 29 years.

In sum, we hold that petitioners voluntarily retired from service and received their complete retirement package and other monetary claims from BTCI.

**WHEREFORE,** the petition for review on *certiorari* is **DENIED**. No costs.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, Perez,* and *Reyes, JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 188283. July 20, 2016]

**CATHAY PACIFIC AIRWAYS, LTD.,** *petitioner, vs.* **SPOUSES ARNULFO and EVELYN FUENTEBELLA,** *respondents.*

**SYLLABUS**

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMMON CARRIERS; IN AN ACTION BASED ON A BREACH OF CONTRACT OF CARRIAGE, THE AGGRIEVED PARTY DOES NOT HAVE TO PROVE THAT THE COMMON CARRIER WAS AT FAULT OR WAS NEGLIGENT, FOR ALL THAT HE HAS TO PROVE IS THE EXISTENCE OF THE CONTRACT AND THE FACT OF ITS NONPERFORMANCE BY THE CARRIER.—** In *Air France v. Gillego*, this Court ruled that in an action based on a breach

of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent; all that he has to prove is the existence of the contract and the fact of its nonperformance by the carrier. In this case, both the trial and appellate courts found that respondents were entitled to First Class accommodations under the contract of carriage, and that petitioner failed to perform its obligation. [W]e have decided to accord respect to the factual findings of the trial and appellate courts.

2. **ID.; ID.; ID.; ID.; THE LAW, RECOGNIZING THE OBLIGATORY FORCE OF CONTRACTS, WILL NOT PERMIT A PARTY TO BE SET FREE FROM THE LIABILITY FOR ANY KIND OF MISPERFORMANCE OF THE CONTRACTUAL UNDERTAKING OR A CONTRAVENTION OF THE TENOR THEREOF; INTERESTS OF THE INJURED PARTY IN BREACH OF CONTRACT CASES.—** In *FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation*, We recognized the interests of the injured party in breach of contract cases: x x x. The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promissee that may include his "expectation interest," which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his "reliance interest," which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good a position as he would have been in had the contract not been made; or his "restitution interest," which is his interest in having restored to him any benefit that he has conferred on the other party.

3. **ID.; ID.; DAMAGES; MORAL AND EXEMPLARY DAMAGES; NOT ORDINARILY AWARDED IN BREACH OF CONTRACT CASES, BUT THE SAME MAY BE AWARDED ONLY WHEN THE BREACH IS WANTON AND DELIBERATELY INJURIOUS, OR THE ONE RESPONSIBLE HAD ACTED FRAUDULENTLY OR WITH MALICE OR BAD FAITH.—** Moral and exemplary

damages are not ordinarily awarded in breach of contract cases. This Court has held that damages may be awarded only when the breach is wanton and deliberately injurious, or the one responsible had acted fraudulently or with malice or bad faith. Bad faith is a question of fact that must be proven by clear and convincing evidence. Both the trial and the appellate courts found that petitioner had acted in bad faith. After review of the records, We find no reason to deviate from their finding.

4. **REMEDIAL LAW; EVIDENCE; THE TESTIMONY OF THE INJURED PARTY NEED NOT BE CORROBORATED BY INDEPENDENT EVIDENCE.—** The Rules of Court do not require that the testimony of the injured party be corroborated by independent evidence. In fact, in criminal cases in which the standard of proof is higher, this Court has ruled that the testimony of even one witness may suffice to support a conviction. What more in the present case, in which petitioner has had adequate opportunity to controvert the testimonies of respondents. In *Singapore Airlines Limited v. Fernandez*, bad faith was imputed by the trial court when it found that the ground staff had not accorded the attention and treatment warranted under the circumstances. This Court found no reason to disturb the finding of the trial court that the inattentiveness and rudeness of the ground staff were gross enough to amount to bad faith. The bad faith in the present case is even more pronounced because petitioner's ground staff physically manhandled the passengers by shoving them to the line, after another staff had insulted them by turning her back on them.

5. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; DAMAGES; AWARD OF MORAL AND EXEMPLARY DAMAGES, REDUCED.—** [T]he award of ₱5 million as moral damages is excessive, considering that the highest amount ever awarded by this Court for moral damages in cases involving airlines is ₱500,000. As We said in *Air France v. Gillego*, "the mere fact that respondent was a Congressman should not result in an automatic increase in the moral and exemplary damages." We find that upon the facts established, the amount of ₱500,000 as moral damages is reasonable to obviate the moral suffering that respondents have undergone. With regard to exemplary damages, jurisprudence shows that ₱50,000 is sufficient to deter similar acts of bad faith attributable to airline representatives.

## APPEARANCES OF COUNSEL

*Siguion Reyna, Montecillo & Ongsiako* for petitioner.
*Lazaro Law Firm* for respondents.

## D E C I S I O N

**SERENO, *C.J.*:**

This is a Petition for Review on Certiorari filed by Cathay Pacific Airways Ltd. from the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. CV No. 87698. The CA affirmed with modification the Decision[3] issued by the Regional Trial Court (RTC) Branch 30 in San Jose, Camarines Sur, in Civil Case No. T-635.

### THE CASE

The case originated from a Complaint[4] for damages filed by respondents Arnulfo and Evelyn Fuentebella against petitioner Cathay Pacific Airways Ltd., a foreign corporation licensed to do business in the Philippines. Respondents prayed for a total of ₱13 million in damages for the alleged besmirched reputation and honor, as well as the public embarrassment they had suffered as a result of a series of involuntary downgrades of their trip from Manila to Sydney via Hong Kong on 25 October 1993 and from Hong Kong to Manila on 2 November 1993.[5] In its Answer,[6] petitioner maintained that respondents had flown on the sections and sectors they had booked and confirmed.

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[1] Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Andres B. Reyes, Jr. and Normandie B. Pizarro; *rollo*, pp. 77-96; dated 31 March 2009.

[2] *Id.* at 98; dated 11 June 2009.

[3] RTC Records, pp. 1242-1260; dated 19 May 2006.

[4] *Id.* at 1-6.

[5] *Rollo*, pp. 5-6.

[6] RTC Records, pp. 21-30.

The RTC ruled in favor of respondents and awarded ₱5 million as moral damages, ₱1 million as exemplary damages, and ₱500,000 as attorney's fees. Upon review, the CA upheld the disposition and the awards, with the modification that the attorney's fees be reduced to ₱100,000.

Petitioner prays that the Complaint be dismissed, or in the alternative, that the damages be substantially and equitably reduced.[7]

## FACTS

In 1993, the Speaker of the House authorized Congressmen Arnulfo Fuentebella (respondent Fuentebella), Alberto Lopez (Cong. Lopez) and Leonardo Fugoso (Cong. Fugoso) to travel on official business to Sydney, Australia, to confer with their counterparts in the Australian Parliament from 25 October to 6 November 1993.[8]

On 22 October 1993, respondents bought Business Class tickets for Manila to Sydney via Hong Kong and back.[9] They changed their minds, however, and decided to upgrade to First Class.[10] From this point, the parties presented divergent versions of facts. The overarching disagreement was on whether respondents should have been given First Class seat accommodations for all the segments of their itinerary.

According to respondents, their travel arrangements, including the request for the upgrade of their seats from Business Class to First Class, were made through Cong. Lopez.[11] The congressman corroborated this allegation.[12] On the other hand, petitioner claimed that a certain Carol Dalag had transacted on

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[7] *Rollo*, p. 67.

[8] *Id.* at 78.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 112.

[12] *Id.* at 86-87.

behalf of the congressmen and their spouses for the purchase of airline tickets for Manila-Hong Kong-Sydney-Hong Kong-Manila.[13] According to petitioner, on 23 October 1993, one of the passengers called to request that the booking be divided into two: one for the Spouses Lopez and Spouses Fugoso, and a separate booking for respondents.[14] Cong. Lopez denied knowing a Carol Dalag.[15] He was not questioned regarding the request for two separate bookings.[16] However, in his testimony, he gave the impression that the travel arrangements had been made for them as one group.[17] He admitted that he had called up petitioner, but only to request an upgrade of their tickets from Business Class to First Class.[18] He testified that upon assurance that their group would be able to travel on First Class upon cash payment of the fare difference, he sent a member of his staff that same afternoon to pay.[19]

Petitioner admits that First Class tickets were issued to respondents, but clarifies that the tickets were open-dated (waitlisted).[20] There was no showing whether the First Class

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[13] *Id.* at 8.

[14] *Id.*

[15] TSN of the Deposition of Congressman Alberto Lopez, RTC Records, p. 674.

[16] *See* the TSN of the Deposition of Congressman Alberto Lopez, RTC Records, pp. 664-674.

[17] *Id.* at 670. The relevant portion reads:

A – We took a commercial flight, Cathay Pacific Airways plane.
Q – When you mentioned "We," to whom are you referring to?
A – Myself, my wife, Congressman and Mrs. Fugoso and Congressman and Mrs. Fuentebella.
Q – In what class were you booked on that flight?
A – We were originally booked on Business Class but we decided to be upgraded to First Class, hence, I requested Cathay Pacific that all six (6) of us be upgraded accordingly.

[18] *Rollo*, p. 87.

[19] *Id.*

[20] *Id.* at 16.

tickets issued to Sps. Lopez and Sps. Fugoso were open-dated or otherwise, but it appears that they were able to fly First Class on all the segments of the trip, while respondents were not.[21]

On 25 October 1993, respondents queued in front of the First Class counter in the airport.[22] They were issued boarding passes for Business Class seats on board CX 902 bound for Hong Kong from Manila and Economy Class seats on board CX 101 bound for Sydney from Hong Kong.[23] They only discovered that they had not been given First Class seats when they were denied entry into the First Class lounge.[24] Respondent Fuentebella went back to the check-in counter to demand that they be given First Class seats or at the very least, access to the First Class Lounge. He recalled that he was treated by the ground staff in a discourteous, arrogant and rude manner.[25] He was allegedly told that the plane would leave with or without them.[26] Both the trial court and the CA gave credence to the testimony of respondent Fuentebella.

During trial, petitioner offered the transcript of the deposition of its senior reservation supervisor, Nenita Montillana (Montillana).[27] She said that based on the record locator, respondents had confirmed reservations for Business Class seats for the Manila-Hong Kong, Sydney-Hong Kong, and Hong Kong-Manila flights; but the booking for Business Class seats for the Hong Kong-Sydney leg was "under request;" and due to the flight being full, petitioner was not able to approve the request.[28]

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[21] *Id.* at 8, 10.

[22] *Id.* at 79.

[23] RTC Records, pp. 9-10.

[24] *Rollo*, p. 79.

[25] *See* Memorandum for Plaintiffs, RTC Records, p. 1187.

[26] *Rollo*, p. 92.

[27] *Id.* at 17.

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

Montillana admitted that First Class tickets had been issued to respondents, but qualified that those tickets were open-dated.[29] She referred to the plane tickets, which bore the annotations "OPEN F OPEN" for all sectors of the flight.[30] Petitioner explained that while respondents expressed their desire to travel First Class, they could not be accommodated because they had failed to confirm and the sections were full on the date and time of their scheduled and booked flights.[31] Petitioner also denied that its personnel exhibited arrogance in dealing with respondents; on the contrary, it was allegedly respondent Fuentebella who was hostile in dealing with the ground staff.[32]

Respondents alleged that during transit through the Hong Kong airport on 25 October 1993, they were treated with far less respect and courtesy by the ground staff.[33] In fact, the first employee they approached completely ignored them and turned her back on them.[34] The second one did not even give them any opportunity to explain why they should be given First Class seats, but instead brushed aside their complaints and told them to just fall in line in Economy Class.[35] The third employee they approached shoved them to the line for Economy Class passengers in front of many people.[36]

Petitioner used the deposition of Manuel Benipayo (Benipayo), airport service officer, and Raquel Galvez-Leonio (Galvez-Leonio), airport services supervisor, to contradict the claims of respondents. Benipayo identified himself as the ground staff who had dealt with respondents' complaint.[37] He testified that

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

[30] *Id.*

[31] *Id.* 6, 9.

[32] *Id.* at 14.

[33] *Id.* at 146.

[34] *Id.*

[35] *Id.* at 146-147.

[36] *Id.* at 147.

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

around five o'clock on 25 October 1993, respondent Fuentebella loudly insisted that he be accommodated on First Class. But upon checking their records, he found out that respondents were only booked on Business Class. [38] Benipayo tried to explain this to respondents in a very polite manner,[39] and he exerted his best effort to secure First Class seats for them, but the plane was already full.[40] He presented a telex sent to their Hong Kong office, in which he requested assistance to accommodate respondents in First Class for the Hong Kong-Sydney flight.[41] He claimed that he was intimidated by respondent Fuentebella into making the notations "Involuntary Downgrading" and "fare difference to be refunded" on the tickets.[42]

For her part, Galvez-Leonio testified that it was company policy not to engage passengers in debates or drawn-out discussions, but to address their concerns in the best and proper way.[43] She admitted, however, that she had no personal knowledge of compliance in airports other than NAIA.[44]

Respondents narrated that for their trip from Hong Kong to Sydney, they were squeezed into very narrow seats for eight and a half hours and, as a result, they felt groggy and miserable upon landing.[45]

Respondents were able to travel First Class for their trip from Sydney to Hong Kong on 30 October 1993.[46] However, on the last segment of the itinerary from Hong Kong to Manila on 2

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[38] *Id.* at 82.

[39] *Id.* at 37.

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

[41] *Id.* at 40.

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

[43] *Id.* at 43.

[44] RTC Records, pp. 533-534.

[45] *Rollo*, pp. 5, 146.

[46] *Id.* at 6.

November 1993, they were issued boarding passes for Business Class.[47]

Upon arrival in the Philippines, respondents demanded a formal apology and payment of damages from petitioner.[48] The latter conducted an investigation, after which it maintained that no undue harm had been done to them.[49]

## RULING OF THE REGIONAL TRIAL COURT

In resolving the case, the trial court first identified the ticket as a contract of adhesion whose terms, as such, should be construed against petitioner.[50] It found that respondents had entered into the contract because of the assurance that they would be given First Class seats.[51]

The RTC gave full faith and credence to the testimonies of respondents and Cong. Fugoso, who testified in open court:

> [T]he court was able to keenly observe [the] demeanor [of respondents' witnesses] on the witness stand and they appear to be frank, spontaneous, positive and forthright neither destroyed nor rebutted in the course of the entire trial . . . The court cannot state the same observation in regard to those witnesses who testified by way of deposition [namely, Cong. Lopez all the witnesses of petitioner], except those appearing in the transcript of records. And on record, it appears [that] witness Nenita Montillana was reading a note.[52]
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> x x x x x x x x x
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> [Montillana's] credibility, therefore, is affected and taking together [her] whole testimony based on the so-called locator record of the plaintiffs spouses from the defendant Cathay Pacific Airways, the same has become less credible, if not, doubtful, to say the least.[53]

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[47] *Id.*

[48] *Id.* at 115.

[49] *See* letter, RTC Records, p. 33.

[50] RTC Records, pp. 1253-1254.

[51] *Id.* at 1255.

[52] *Id.* at 1256.

[53] *Id.* at 1258.

The trial court ordered petitioner to pay ₱5 million as moral damages, ₱1 million as exemplary damages, and ₱500,000 as attorney's fees. In setting the award for moral damages, the RTC considered the prestigious position held by respondent Fuentebella, as well as the bad faith exhibited by petitioner.[54] According to the trial court, the contract was flagrantly violated in four instances: first, when respondents were denied entry to the First Class lounge; second, at the check-in counter when the airport services officer failed to adequately address their concern; third, at the Hong Kong airport when they were ignored; and fourth, when respondents became the butt of jokes upon their arrival in Sydney.[55]

**RULING OF THE COURT OF APPEALS**

The CA affirmed the RTC Decision with the modification that the attorney's fees be reduced to ₱100,000. The appellate court reviewed the records and found that respondents were entitled to First Class accommodation throughout their trip.[56] It gave weight to the testimony of Cong. Lopez that they had paid the fare difference to upgrade their Business Class tickets to First Class.[57] It also considered the handwritten notation on the First Class tickets stating "fare difference to be refunded" as proof that respondents had been downgraded.[58]

With regard to the question of whether respondents had confirmed their booking, the CA considered petitioner's acceptance of the fare difference and the issuance of the First Class tickets as proof that the request for upgrade had been approved.[59] It noted that the tickets bore the annotation that reconfirmation of flights is no longer necessary, further strengthening the fact of confirmation.[60]

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[54] *Id.* at 1259.

[55] *Id.*

[56] *Rollo*, p. 85.

[57] *Id.* at 86-87.

[58] *Id.* at 88.

[59] *Id.* at 89.

[60] *Id.* at 88.

The CA found that there were no conditions stated on the face of the tickets; hence, respondents could not be expected to know that the tickets they were holding were open-dated and were subject to the availability of seats.[61] It applied the rule on contracts of adhesion, and construed the terms against petitioner.

Finding that there was a breach of contract when petitioner assigned Business Class and Economy Class seats to First Class ticket holders, the CA proceeded to determine whether respondents were entitled to moral damages. It said that bad faith can be inferred from the inattentiveness and lack of concern shown by petitioner's personnel to the predicament of respondents.[62] The court also considered as a badge of bad faith the fact that respondents had been downgraded due to overbooking.[63]

As regards the amount of moral damages awarded by the RTC, the CA found no prejudice or corruption that might be imputed to the trial court in light of the circumstances.[64] The appellate court pointed out that the trial court only awarded half of what had been prayed for.[65]

The award of exemplary damages was sustained to deter a similar shabby treatment of passengers and a wanton and reckless refusal to honor First Class tickets.[66] The award for attorney's fees was likewise sustained pursuant to Article 2208 (2) of the Civil Code which allows recovery thereof when an act or omission of the defendant compelled the plaintiff to litigate or incur expense to protect the latter's interest.[67]

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[61] *Id.*

[62] *Id.* at 92.

[63] *Id.* at 93.

[64] *Id.* at 94.

[65] *Id.*

[66] *Id.*

[67] *Id.* at 95.

## RULING OF THE COURT

***There was a breach of contract.***

In *Air France v. Gillego*,[68] this Court ruled that in an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent; all that he has to prove is the existence of the contract and the fact of its nonperformance by the carrier. In this case, both the trial and appellate courts found that respondents were entitled to First Class accommodations under the contract of carriage, and that petitioner failed to perform its obligation. We shall not delve into this issue more deeply than is necessary because We have decided to accord respect to the factual findings of the trial and appellate courts. We must, however, point out a crucial fact We have uncovered from the records that further debunks petitioner's suggestion[69] that two sets of tickets were issued to respondents — one for Business Class and another for open-dated First Class tickets with the following entries:[70]

| Segment | Business Class Tickets Date of Issue: 23 October 1993 | | | First Class Tickets Date of Issue: 25 October 1993 | | | Actual Class Boarded |
|---|---|---|---|---|---|---|---|
| | Flight | Class | Status | Flight | Class | Status | |
| Manila-Hong Kong | CX 902 | C | OK | OPEN | F | - | Business |
| HongKong-Sydney | CX 101 | C | RQ | OPEN | F | - | Economy |

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[68] 653 Phil. 138 (2010); citing *China Air Lines, Ltd. v. Court of Appeals,* G.R. Nos. L-45985 & L-46036, 18 May 1990, 185 SCRA 449, 457.

[69] *Rollo*, p. 28.

"If indeed assurances or representations were made by petitioner that should respondents pay the difference between Business Class and First Class tickets then they would be booked and confirmed on the First Class, then there is no reason why they should be in possession of the two (2) unused Business Class tickets. The said Business Class tickets should have been surrendered and petitioner would surely have taken these from the respondents and issued them two (2) First Class tickets, if the latter merely paid the difference between the Business Class and First Class tickets. Respondents' possession of the two (2) unused Business Class tickets as well as two (2) First Class ticket stubs means that two (2) sets of tickets were presented to and used during their flight with petitioner."

[70] *See* RTC Records, pp. 262, 267, 272, 277.

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|---|---|---|---|---|---|---|---|
| Sydney-Hong Kong | CX 100 | C | OK | OPEN | F | - | First |
| Hong Kong-Manila | CX 901 | C | OK | OPEN | F | - | Business |

The First Class tickets issued on 25 October 1993 indicate that they were "issued in exchange for Ticket Nos. 160-401123987 and 160-4474920334/5."[71] The latter set of tickets numbered 160-4474920334/5 correspond to the Business Class tickets issued on 23 October 1993, which in turn originated from Ticket No. 160-4011239858 issued on 22 October 1993.[72]

With this information, We can conclude that petitioner may have been telling the truth that the passengers made many changes in their booking. However, their claim that respondents held both Business Class tickets and the open-dated First Class tickets is untrue. We can also conclude that on the same day of the flight, petitioner still issued First Class tickets to respondents. The incontrovertible fact, therefore, is that respondents were holding First Class tickets on 25 October 1993.

In *FGU Insurance Corporation v. G.P. Sarmiento Trucking Corporation*,[73] We recognized the interests of the injured party in breach of contract cases:

x x x The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof. A breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. The remedy serves to preserve the interests of the promissee that may include his "expectation interest," which is his interest in having the benefit of his bargain by being put in as good a position as he would have been in had the contract been performed, or his "reliance interest," which is his interest in being reimbursed for loss caused by reliance on the contract by being put in as good

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[71] *Id.* at 272, 277.

[72] *Id.* at 262, 267.

[73] 435 Phil. 333 (2002) cited in *Radio Communications of the Philippines, Inc. v. Verchez*, 516 Phil. 725 (2006).

a position as he would have been in had the contract not been made; or his "restitution interest," which is his interest in having restored to him any benefit that he has conferred on the other party.

According to Montillana, a reservation is deemed confirmed when there is a seat available on the plane.[74] When asked how a passenger was informed of the confirmation, Montillana replied that computer records were consulted upon inquiry.[75] By its issuance of First Class tickets on the same day of the flight in place of Business Class tickets that indicated the preferred and confirmed flight, petitioner led respondents to believe that their request for an upgrade had been approved.

Petitioner tries to downplay the factual finding that no explanation was given to respondents with regard to the types of ticket that were issued to them. It ventured that respondents were seasoned travelers and therefore familiar with the concept of open-dated tickets.[76] Petitioner attempts to draw a parallel with *Sarreal, Jr. v. JAL*,[77] in which this Court ruled that the airline could not be faulted for the negligence of the passenger, because the latter was aware of the restrictions carried by his ticket and the usual procedure for travel. In that case, though, records showed that the plaintiff was a well-travelled person who averaged two trips to Europe and two trips to Bangkok every month for 34 years. In the present case, no evidence was presented to show that respondents were indeed familiar with the concept of open-dated ticket. In fact, the tickets do not even contain the term "open-dated."

***There is basis for the award of moral and exemplary damages; however, the amounts were excessive.***

Moral and exemplary damages are not ordinarily awarded in breach of contract cases. This Court has held that damages

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[74] *Rollo*, p. 18.

[75] *Id.*

[76] *Id.* at 28.

[77] G.R. No. 75308, 23 March 1992, 207 SCRA 359.

may be awarded only when the breach is wanton and deliberately injurious, or the one responsible had acted fraudulently or with malice or bad faith.[78] Bad faith is a question of fact that must be proven by clear and convincing evidence.[79] Both the trial and the appellate courts found that petitioner had acted in bad faith. After review of the records, We find no reason to deviate from their finding.

Petitioner argues that the testimonial evidence of the treatment accorded by its employees to respondents is self-serving and, hence, should not have been the basis for the finding of bad faith.[80] We do not agree. The Rules of Court do not require that the testimony of the injured party be corroborated by independent evidence. In fact, in criminal cases in which the standard of proof is higher, this Court has ruled that the testimony of even one witness may suffice to support a conviction. What more in the present case, in which petitioner has had adequate opportunity to controvert the testimonies of respondents.

In *Singapore Airlines Limited v. Fernandez*,[81] bad faith was imputed by the trial court when it found that the ground staff had not accorded the attention and treatment warranted under the circumstances. This Court found no reason to disturb the finding of the trial court that the inattentiveness and rudeness of the ground staff were gross enough to amount to bad faith. The bad faith in the present case is even more pronounced because petitioner's ground staff phy*sic*ally manhandled the passengers by shoving them to the line, after another staff had insulted them by turning her back on them.

However, the award of ₱5 million as moral damages is excessive, considering that the highest amount ever awarded by this Court for moral damages in cases involving airlines is

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[78] See *Cervantes v. Court of Appeals,* 363 Phil. 399 (1999).

[79] *Id.*

[80] *Rollo*, p. 34.

[81] 463 Phil. 145 (2003).

₱500,000.[82] As We said in *Air France v. Gillego*,[83] "the mere fact that respondent was a Congressman should not result in an automatic increase in the moral and exemplary damages."

We find that upon the facts established, the amount of ₱500,000 as moral damages is reasonable to obviate the moral suffering that respondents have undergone. With regard to exemplary damages, jurisprudence shows that ₱50,000 is sufficient to deter similar acts of bad faith attributable to airline representatives.[84]

**WHEREFORE,** the Petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated 31 March 2009 in CA-G.R. CV No. 87698 is hereby **AFFIRMED** with **MODIFICATION** in that moral and exemplary damages are hereby reduced to ₱500,000 and ₱50,000, respectively. These amounts shall earn legal interest of 6% per annum from the finality of this Decision until full payment.

**SO ORDERED.**

*Leonardo-de Castro, Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

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[82] In *Zulueta v. Pan American World Airways, Inc*. (150 Phil. 465 [1972]), this Court awarded moral damages amounting to ₱500,000 to a couple and their daughter who were constrained to take Third Class accommodation in lieu of the First Class passage they were entitled to, rudely addressed, publicly humiliated, cordoned off by men in uniform as if they were criminals, referred to as monkeys, and off-loaded on a barren island.

In *Japan Airlines v. Martinez* (575 Phil. 359 [2008]), the Court awarded the same amount because of the humiliation and delay suffered by the plaintiff, who had been wrongfully accused of falsification of travel documents and "haughtily ejected" from the plane infront of many passengers.

In *Northwest Airlines, Inc. v. Spouses Heshan* (625 Phil. 304 [2010]), the same amount of moral damages was awarded because plaintiffs, who had confirmed seats for the flight, were forced to board another airline due to overbooking.

[83] 653 Phil. 138 (2010).

[84] See *Air France v. Gillego*, 653 Phil. 138 (2010).

**THIRD DIVISION**

[G.R. No. 190158. July 20, 2016]

**HEIRS OF LIBERATO CASTILLEJOS and RURAL BANK OF AGOO, LA UNION,** *petitioners, vs.* **LA TONDEÑA INCORPORADA,** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONFINED TO QUESTIONS OF LAW, AS THE COURT IS NOT A TRIER OF FACTS AND IT IS BOUND BY THE FACTUAL FINDINGS OF THE COURT OF APPEALS; EXCEPTIONS; PRESENT.—** It is immediately noticeable that the petition suffers a procedural infirmity since its resolution involves factual questions that require for their determination and evaluation of the evidentiary record. Settled is the rule that the Court is not a trier of facts and it is bound by the factual findings of the CA; hence, a petition for review should be confined to questions of law. The rule, however, permits exceptions, two of which obtain in the present case – (a) when the judgment of the CA is based on a misapprehension of facts or (b) when its findings are not sustained by the evidence on record.

2. **CIVIL LAW; OWNERSHIP; QUIETING OF TITLE; FOR THE ACTION TO QUIET TITLE TO PROPERTY OR TO REMOVE A CLOUD THEREON TO PROSPER, IT MUST BE ESTABLISHED THAT THE PLAINTIFF OR COMPLAINANT HAS A LEGAL OR AN EQUITABLE TITLE TO OR INTEREST IN THE REAL PROPERTY WHICH IS THE SUBJECT MATTER OF THE ACTION, AND THE DEED, CLAIM, ENCUMBRANCE OR PROCEEDING THAT IS BEING ALLEGED AS A CLOUD ON PLAINTIFF'S TITLE MUST BE SHOWN TO BE IN FACT INVALID OR INOPERATIVE DESPITE ITS *PRIMA FACIE* APPEARANCE OF VALIDITY OR LEGAL EFFICACY.—** "An action to quiet title to property or to remove a cloud thereon is a remedy or form of proceeding originating in equity jurisprudence. The plaintiff in such an action seeks

for adjudication that any adverse claim of title or interest in the property in question is invalid, so that the plaintiff and those claiming under him or her may forever be free from any danger of the hostile claim." It is governed by Article 476 of the Civil Code x x x. For the action to prosper, two requisites must concur, *viz*: (1) the plaintiff or complainant must have a legal or an equitable title to or interest in the real property which is the subject matter of the action; and (2) the deed, claim, encumbrance or proceeding that is being alleged as a cloud on plaintiff's title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

3. **ID.; ID.; ID.; CLAIM OF OVERLAPPING NOT CLEARLY ESTABLISHED; REMAND OF THE CASE TO THE REGIONAL TRIAL COURT, WARRANTED.—** [N]o clear and concrete evidence is extant from the records that the properties covered by Liberato's TD Nos. 26682 and 26683 are the same parcels of land described in the respondent's TDs. The boundaries, nature and classification of the land claimed by the parties appear to be different. x x x. The respondent failed to illustrate, prove or even allege which portion of the land covered by its TD was allegedly encroached upon by Liberato's TD Nos. 26682 and 26683. It did not submit a technical description or survey report to identify the exact locations of the property it claims *vis-à-vis* the one claimed by Liberato. Considering that the claim of overlapping has not been clearly established, the Court deems it appropriate to remand the case to the RTC for the conduct of a verification/relocation survey under the direction and supervision of the Land Management Bureau of the DENR. In the event that the respondent's claim of encroachment is found to be correct, the corresponding adjustment in the metes and bounds of Liberato's property should be reflected in TD Nos. 26682 and 26683, which will then have to be partially, if not totally voided, and the corresponding amendment as to the precise area and technical description be made.

**APPEARANCES OF COUNSEL**

*Zuniega Olaso Macapundag & Salvador* for petitioners.
*Castillo Laman Tan Pantaleon & San Jose* for respondent.

## RESOLUTION

**REYES, *J.*:**

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated May 29, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 90598 which affirmed the Decision[3] dated September 12, 2007 of the Regional Trial Court (RTC) of Bauang, La Union, Branch 33 in Civil Case No. 1108-BG, granting La Tondeña Incorporada's (respondent) complaint for quieting of title, declaration of nullity and/or nullification of tax declaration and damages.

### The Antecedents

On September 16, 1997, the respondent filed a Complaint[4] for Quieting of Title, Declaration of Nullity and/or Nullification of Tax Declarations and Damages against Liberato Castillejos (Liberato) who perished pending trial and was thus substituted by his heirs, herein petitioners.

In its complaint, the respondent averred that it is the absolute owner of two parcels of land, with an area of 1,944 square meters, more or less, and 184,354 sq.m., more or less, respectively, located at Barangay Bagbag (now Casilagan), Bauang, La Union, covered by Tax Declaration (TD) Nos. 93-005-5221, 4634, 9730, 51100, 28834, and 18506 issued by the Provincial Assessor of La Union in 1994, 1985, 1980, 1974, 1959, and 1953, respectively.[5]

The respondent alleged that on May 29, 1991, Liberato, through stealth, misrepresentation and deliberate fraud,

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[1] *Rollo*, pp. 31-69.

[2] Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court), with Associate Justices Monina Arevalo-Zenarosa and Priscilla J. Baltazar-Padilla concurring; *id.* at 75-89.

[3] Issued by Judge Rose Mary R. Molina-Alim; *id.* at 92-103.

[4] *Id.* at 104-109.

[5] *Id.* at 105.

maliciously executed an affidavit of ownership over the subject properties and presented the same to the Provincial Assessor of La Union who, in turn, issued in his name TD Nos. 26682 and 26683 on May 31, 1991.[6]

Likewise, the respondent claimed that by itself and through its predecessors-in-interest, it has been in continuous, open, public and adverse possession of the subject real properties through time immemorial.[7]

Liberato, for his part, claimed that his land and the subject properties claimed by the respondent are different from one another because they have different boundaries. He alleged that his land was tilled by his father-in-law since 1940 before he took possession thereof in 1962. He planted the land with different crops and trees and built a house thereon where he and his family have continuously resided.[8]

During trial, the parties endeavored to substantiate their respective claims of ownership. The evidence for the respondent showed that the subject property was originally covered by TD No. 7511[9] series of 1947 which was later on cancelled in 1953 by TD No. 18506.[10] In these two TDs, the stated owner was "Homestead (Unknown)" with Juan Dumuk (Juan) as the administrator.[11] In 1959, TD No. 28834[12] was issued in the respondent's name. From then on, the TDs on the subject property reflected its name as owner, the latest of which having been issued in 1994.[13] On June 6, 1959, Juan executed an affidavit

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[6] *Id.* at 106.

[7] *Id.*

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

[9] *Id.* at 161-162.

[10] *Id.* at 163-164.

[11] *Id.* at 94.

[12] *Id.* at 165-166.

[13] *Id.* at 167-173.

acknowledging his appointment as the respondent's administrator.[14] On March 23, 1994, he was replaced by his son Victor Dumuk (Victor).[15]

Victor was in charge of updating the payment of realty taxes on the respondent's land, preventing or evicting illegal occupants and collecting monthly rentals from registered occupants. Sometime thereafter, Carlos Supsup and Warlito Suniega (Warlito), the land's registered occupants, reported to Victor that Liberato was claiming ownership of a portion of the land they were tilling and that he ordered them to vacate the same. Victor later on discovered that there were two TDs issued in Liberato's name. He, thus, brought the matter to the attention of the respondent's officials.[16]

Liberato, for his part, presented an affidavit of ownership and TD Nos. 26682[17] and 26683[18] over Lots 20096 and 20097, respectively. He also declared that in 1986, he allowed his nephew Warlito to plant *palay* in a portion of his land.[19]

Engineer Gerry Boado, the technical supervisor of the Survey Records Section, Regional Survey Division of the Department of Environment and Natural Resources (DENR), testified that based on the cadastral record of Bauang, La Union, Liberato was the only claimant of Lots 20096 and 20097 covered by TD Nos. 26682 and 26683.[20]

**Ruling of the RTC**

In the Decision[21] dated September 12, 2007, the RTC granted the complaint for the reason that the respondent had older

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[14] *Id.* at 174.

[15] *Id.* at 95.

[16] *Id.*

[17] *Id.* at 177-178.

[18] *Id.* at 179-180.

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

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

[21] *Id.* at 92-103.

documents proving ownership. The respondent's oldest TD was issued way back in 1948 while Liberato's TDs were dated 1982.[22] In Liberato's affidavit of ownership, there was no mention as to how he acquired the land.[23] The RTC did not give weight to the cadastral record that Liberato is the only claimant of Lots 20096 and 20097 because he did not notify the respondent when the survey was conducted.[24] Finally, the RTC rejected the petitioners' argument that the respondent, being a corporation, is prohibited by the 1987 Constitution from acquiring real estate and instead ruled that the respondent already had vested right to acquire the land prior to the enactment of the constitutional prohibition.[25] The RTC awarded attorney's fees in favor of the respondent for the reason that the case had been pending for several years.[26] Thus, the RTC disposed as follows:

**WHEREFORE**, premises considered, this Court rules in favor of [the respondent] and against [Liberato], and declares:

1. The [respondent] as the true and absolute owner of the properties covered by [TD] No. 93-005-5221;
2. [TD] No. 93-005-5221 and all [TDs] in the name of [the respondent] issued prior to it valid;
3. [TD] Nos. 26682 and 26683 in [Liberato's] name void; and,
4. The [petitioners] to pay [the respondent] attorney's fees amounting to Twenty Thousand Pesos (Php20,000.00) and to pay the cost of suit.

**SO ORDERED**.[27]

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[22] *Id.* at 102.

[23] *Id.*

[24] *Id.*

[25] *Id.* at 102-103.

[26] *Id.* at 103.

[27] *Id.*

### Ruling of the CA

The CA, in its Decision[28] dated May 29, 2009, affirmed the RTC decision stressing that the oldest TD in favor of the respondent is sufficient proof that it owns the land. Although TDs are not conclusive proof of ownership, they are nonetheless, good indication of possession in concept of owner. The respondent also exercised acts of ownership and possession over the land through its administrators.[29] The CA further held that there is no conclusive proof that the lands claimed by the parties are actually separate and distinct. Accordingly, the CA held, thus:

> **WHEREFORE**, the instant appeal is hereby **DISMISSED** and the Decision of the [RTC] of Bauang, La Union, Branch 33, in Civil Case No. 1108-BG, **AFFIRMED**.
>
> **SO ORDERED**.[30]

The petitioners moved for reconsideration[31] but it was denied in the CA Resolution[32] dated November 4, 2009. Hence, the present recourse.

### Ruling of the Court

The petition is partly meritorious.

It is immediately noticeable that the petition suffers a procedural infirmity since its resolution involves factual questions that require for their determination and evaluation of the evidentiary record. Settled is the rule that the Court is not a trier of facts and it is bound by the factual findings of the CA; hence, a petition for review should be confined to questions of law. The rule, however, permits exceptions, two of which obtain in the present case — (a) when the judgment of the CA is based

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[28] *Id.* at 75-89.

[29] *Id.* at 84-85.

[30] *Id.* at 88.

[31] *Id.* at 138-158.

[32] *Id.* at 90-91.

on a misapprehension of facts or (b) when its findings are not sustained by the evidence on record.[33]

"An action to quiet title to property or to remove a cloud thereon is a remedy or form of proceeding originating in equity jurisprudence. The plaintiff in such an action seeks for adjudication that any adverse claim of title or interest in the property in question is invalid, so that the plaintiff and those claiming under him or her may forever be free from any danger of the hostile claim."[34] It is governed by Article 476 of the Civil Code which reads:

Art. 476. Whenever there is cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

For the action to prosper, two requisites must concur, *viz*: (1) the plaintiff or complainant must have a legal or an equitable title to or interest in the real property which is the subject matter of the action; and (2) the deed, claim, encumbrance or proceeding that is being alleged as a cloud on plaintiff's title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[35]

In this case, no clear and concrete evidence is extant from the records that the properties covered by Liberato's TD Nos. 26682 and 26683 are the same parcels of land described in the respondent's TDs. The boundaries, nature and classification of the land claimed by the parties appear to be different. The

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[33] *Republic of the Philippines v. East Silverlane Realty Development Corporation*, 682 Phil. 376, 384 (2012).

[34] *Spouses Divinagracia v. Cometa*, 518 Phil. 79, 84 (2006).

[35] *Robles v. CA*, 384 Phil. 635, 647 (2000).

TDs proffered by the respondent shows that the land it claims has the following boundaries: *North* — Leandro Quinzon, *South* — Luisa Perillo and Others, *East* — Faustino Pichay and Others, and *West* — Santiago Lucas Quinzon, *etc*.[36]

The land covered by TD Nos. 7511,[37] 18506[38] and 28834[39] was classified as cogon and forest land with an area of 186,348 sq.m., the 1,944-sq-m portion of which was later on reclassified in TD Nos. 51100,[40] 09730,[41] 4634[42] and 93-005-5221[43] as upland riceland/unirrigated riceland.

On the other hand, Liberato's TD No. 26682[44] pertained to a land classified as pastureland (160,000 sq.m.), unirrigated riceland (1,681 sq.m.) and orchard (1,000 sq.m.) with the following boundaries: *North* — Barangay Road, *South* — Lot No. 20105, *East* — Lot Nos. 10467, 10441, 10431 and 10430, and *West* — Lot Nos. 20107, 20144, 10479 and 13194.

Meanwhile, Liberato's TD No. 26683[45] refers to a land, the 35,000-sq-m portion of which is classified as pastureland, with the rest of its 5,272-sq-m portion described as unirrigated riceland.

The respondent failed to illustrate, prove or even allege which portion of the land covered by its TD was allegedly encroached upon by Liberato's TD Nos. 26682 and 26683. It did not submit a technical description or survey report to identify the exact

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[36] *Rollo*, pp. 161-173.

[37] *Id.* at 161-162.

[38] *Id.* at 163-164.

[39] *Id.* at 165-166.

[40] *Id.* at 167-168.

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

[42] *Id.* at 171.

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

[44] *Id.* at 177-178.

[45] *Id.* at 179-180.

locations of the property it claims *vis-à-vis* the one claimed by Liberato.

Considering that the claim of overlapping has not been clearly established, the Court deems it appropriate to remand the case to the RTC for the conduct of a verification/relocation survey under the direction and supervision of the Land Management Bureau of the DENR. In the event that the respondent's claim of encroachment is found to be correct, the corresponding adjustment in the metes and bounds of Liberato's property should be reflected in TD Nos. 26682 and 26683, which will then have to be partially, if not totally voided, and the corresponding amendment as to the precise area and technical description be made.

**WHEREFORE,** the Decision dated May 29, 2009 of the Court of Appeals in CA-G.R. CV No. 90598 and the Decision dated September 12, 2007 of the Regional Trial Court of Bauang, La Union, Branch 33 in Civil Case No. 1108-BG granting the respondent's complaint for quieting of title, are **SET ASIDE**. The case is **REMANDED** to the said RTC which is hereby directed to order the Land Management Bureau of the Department of Environment and Natural Resources to conduct a verification/ relocation survey to determine the overlapping of properties covered by the Heirs of Liberato Castillejos' TD Nos. 26682 and 26683 and the La Tondeña Incorporada's TD No. 93-005-5221 issued by the Provincial Assessor of La Union.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, Perez,* and *Leonen*[*] *JJ.,* concur.

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[*] Additional Member per Raffle dated May 30, 2016 *vice* Associate Justice Francis H. Jardeleza.

**THIRD DIVISION**

[G.R. No. 190408. July 20, 2016]

**BENJIE B. GEORG represented by BENJAMIN C. BELARMINO, JR.,** *petitioner, vs.* **HOLY TRINITY COLLEGE, INC.,** *respondent.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE FINAL AND CONCLUSIVE AND THE COURT WILL NOT REVIEW THEM ON APPEAL; EXCEPTIONS; PRESENT. —** The issues presented involve questions of fact. A question of fact exists when a doubt or difference arises as to the truth or the falsehood of alleged facts; and when there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. As a rule, the findings of fact of the Court of Appeals are final and conclusive and this Court will not review them on appeal, subject to the following exceptions: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. Exception No. 7 obtains

in this case. The findings of the RTC are contrary to those of the Court of Appeals.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; ESSENTIAL REQUISITES; A DEFECT IN CONSENT RENDERS THE CONTRACT VOIDABLE.—** The essential requisites of a contract under Article 1318 of the New Civil Code are: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. The validity of the MOA is being assailed for a defect in consent. Under Article 1330 of the Civil Code, consent may be vitiated by any of the following: (1) mistake, (2) violence, (3) intimidation, (4) undue influence, and (5) fraud. Under the same provision, the contract becomes voidable.

3. **ID.; ID.; ID.; ID.; VITIATED CONSENT; CAUSAL FRAUD; PRIOR TO OR SIMULTANEOUS WITH EXECUTION OF A CONTRACT, ONE PARTY SECURES THE CONSENT OF THE OTHER BY USING DECEPTION, WITHOUT WHICH SUCH CONSENT WOULD NOT HAVE BEEN GIVEN.—** There is fraud when one party is induced by the other to enter into a contract, through and solely because of the latter's insidious words or machinations. But not all forms of fraud can vitiate consent. Under Article 1330, fraud refers to *dolo causante* or causal fraud, in which, prior to or simultaneous with execution of a contract, one party secures the consent of the other by using deception, without which such consent would not have been given.

4. **REMEDIAL LAW; CIVIL PROCEDURE; DEPOSITIONS PENDING ACTION; WHEN MAY BE TAKEN; LEAVE OF COURT IS NOT NECESSARY TO TAKE A DEPOSITION AFTER AN ANSWER TO THE COMPLAINT HAS BEEN SERVED; IT IS ONLY WHEN AN ANSWER HAS NOT YET BEEN FILED, BUT JURISDICTION HAS BEEN OBTAINED OVER ANY DEFENDANT OR OVER PROPERTY SUBJECT OF THE ACTION, THAT PRIOR LEAVE OF COURT IS REQUIRED.—** [P]etitioner correctly noted that respondent's counsel did not seek a leave of court to conduct a deposition in violation of Section 1, Rule 23 of the Rules of Court x x x. In *Republic of the Phils. v. Sandiganbayan*, we held that:

Depositions pending action may be conducted by oral examination or written interrogatories, and may be taken at the instance of any party, with or without leave of court. Leave of court is not necessary to take a deposition after an answer to the complaint has been served. It is only when an answer has not yet been filed (but jurisdiction has been obtained over any defendant or over property subject of the action) that prior leave of court is required. The reason for this is that before filing of the answer, the issues are not yet joined and the disputed facts are not clear. In this case, respondent's counsel filed a Notice of Deposition for the Taking of Deposition on 28 October 2002. The Answer with Counterclaim was only filed on 21 February 2005. In this instance, respondent should have asked for leave of court. Considering that the trial court has the discretion to decide whether a deposition may or may not be taken, it follows that it also has the discretion to disregard a deposition for non-compliance with the rules.

5. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; A NOTARIZED DOCUMENT ENJOYS THE PRESUMPTION OF REGULARITY AND IS CONCLUSIVE AS TO THE TRUTHFULNESS OF ITS CONTENTS ABSENT ANY CLEAR AND CONVINCING PROOF TO THE CONTRARY.—** [T]here is nothing in the deposition that tends to prove that Sr. Medalle's consent was vitiated. Sr. Medalle claimed that she affixed her thumbmark on the MOA on the basis of Enriquez's representation that her signature/thumbmark is necessary to facilitate the release of the loan. As intended, the affixing of her thumbmark in fact caused the immediate release of the loan. Petitioner's claim that the provisions of the MOA were read to Sr. Medalle was found credible by the Court of Appeals. The Court of Appeals discussed at length how proper care and caution was taken by Atty. Belarmino to verify what the Groups's trip was all about and the extent of the authority of Sr. Medalle regarding the project. x x x. It simply defies logic that Atty. Belarmino would employ fraud just so Sr. Medalle could affix her thumbmark to facilitate the release of the loan coming from Atty. Belarmino himself. At this juncture, it should be emphasized that a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents absent any clear and convincing proof to the contrary.

6. **COMMERCIAL LAW; CORPORATIONS; DOCTRINE OF APPARENT AUTHORITY; 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; EXISTENCE OF APPARENT AUTHORITY, HOW ASCERTAINED.—** Assuming *arguendo* that Sr. Medalle was not authorized by the Holy Trinity College Board, the doctrine of apparent authority applies in this case. 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 existence of apparent authority 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, whether within or beyond the scope of his ordinary powers. In this case, Sr. Medalle formed and organized the Group. She had been giving financial support to the Group, in her capacity as President of Holy Trinity College. Sr. Navarro admitted that the Board of Trustees never questioned the existence and activities of the Group. Thus, any agreement or contract entered into by Sr. Medalle as President of Holy Trinity College relating to the Group bears the consent and approval of respondent. It is through these dynamics that we cannot fault petitioner for relying on Sr. Medalle's authority to transact with petitioner.

**APPEARANCES OF COUNSEL**

*Belarmino Law Office* for petitioner.
*Padilla Law Office* for respondent.

## DECISION

**PEREZ, *J.*:**

This petition for review seeks to reverse the 17 November 2009 Decision[1] of the Court of Appeals in CA-G.R. CV No. 89990 and reinstate the 29 November 2006 Decision[2] of the Regional Trial Court (RTC), Branch 15, Tabaco City in Civil Case No. T-2161.

The Holy Trinity College Grand Chorale and Dance Company (the Group) was organized in 1987 by Sister Teresita Medalle (Sr. Medalle), the President of respondent Holy Trinity College in Puerto Princesa City. The Grand Chorale and Dance Company were two separate groups but for the purpose of performing locally or abroad, they were usually introduced as one entity. The Group was composed of students from Holy Trinity College.

In 2001, the Group was slated to perform in Greece, Italy, Spain and Germany. Edward Enriquez (Enriquez), who allegedly represented Sr. Medalle, contacted petitioner Benjie B. Georg to seek assistance for payment of the Group's international airplane tickets. Petitioner is the Filipino wife of a German national Heinz Georg. She owns a German travel agency named D'Travellers Reiseburo Georg. Petitioner, in turn, requested her brother, Atty. Benjamin Belarmino, Jr. (Atty. Belarmino), to represent her in the negotiation with Enriquez. Enriquez was referred to petitioner by Leonora Dietz (Dietz), another Filipino-German who has helped Philippine cultural groups obtain European engagements, including financial assistance.

On 24 April 2001, a Memorandum of Agreement with Deed of Assignment[3] (MOA) was executed between petitioner, represented by Atty. Belarmino, as first party-assignee; the

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[1] *Rollo*, pp. 16-69; Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Apolinario D. Bruselas, Jr. and Mario V. Lopez concurring.

[2] *Id.* at 243-325: Presided by Judge Alben C. Rabe.

[3] *Id.* at 160-165.

Group, represented by Sr. Medalle, O.P. and/or its Attorney-in-Fact Enriquez, as second-party assignor and S.C. Roque Group of Companies Holding Limited Corporation and S.C. Roque Foundation Incorporated, represented by Violeta P. Buenaventura, as foundation-grantor. Under the said Agreement, petitioner, through her travel agency, will advance the payment of international airplane tickets amounting to ₱4,624,705.00 in favor of the Group on the assurance of the Group represented by Sr. Medalle through Enriquez that there is a confirmed financial allocation of ₱4,624,705.00 from the foundation-grantor, S.C. Roque Foundation (the Foundation). The second-party assignor assigned said amount in favor of petitioner. Petitioner paid for the Group's domestic and international airplane tickets.

In an Amended Complaint[4] dated 15 August 2001 for a Sum of Money with Damages filed before the RTC, Branch 18, Tabaco City, petitioner claimed that the second-party assignor/respondent and the foundation-grantor have not paid and refused to pay their obligation under the MOA. Petitioner prayed that they be ordered to solidarily pay the amount of ₱4,624,705.00 representing the principal amount mentioned in the Agreement, moral, exemplary, and actual damages, legal fees, and cost of suit.[5] The corresponding summonses were served.

On 14 September 2001, respondent filed a motion to dismiss on the ground that petitioner had no cause of action against it. On 6 November 2001, petitioner filed a Petition for Issuance of a Writ of Attachment.

On 21 April 2003, the trial court issued an Order denying the motion to dismiss, as well as the petition for issuance of a writ of attachment against respondent. A Preliminary Attachment against the foundation-grantor has previously been issued.

An Order of Default has been pronounced by the trial court against the foundation-grantor and its responsible officers for the latter's failure to file its answer despite service of summons.

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[4] *Id.* at 151-154.

[5] *Id.* at 154.

During the pre-trial, the following facts were stipulated:

1. Sr. Teresita Medalle, OP, [placed her thumbmark] in the subject MOA at the University of Sto. Tomas on 24 April 2001 in Espana, Manila.
2. At the time Sr. Teresita Medalle, O.P. [placed her thumbmark] in the subject MOA, she was still suffering from stroke.
3. The subject MOA was notarized in Makati City.[6]

and the following issues were submitted for resolution:

1. Whether or not when Sr. Teresita Medalle affixed her thumbmark in the MOA, she is affixing her thumbmark as President of the Holy Trinity College.
2. Whether or not Holy Trinity College is in estoppel?
3. Whether or not the Holy Trinity College may be bound by the acts of Sr. Teresita Medalle.
4. Whether or not the principle piercing the veil of corporate fiction may be applied in this case.
5. Whether or not Holy Trinity College may be considered a party in the MOA.
6. Whether or not defendant may be held liable to pay the sum due in the MOA plus damages and litigation expenses.
7. Whether or not [respondent] is entitled to the relief sought for the Complaint.
8. Whether or not the school is entitled to its counterclaim.[7]

On 4 August 2005, the trial court reconsidered its Order of 21 April 2003 and issued a Writ of Attachment against respondent.

In their Answer with Counterclaim, respondent argued that the MOA on which petitioner based its cause of action does not state that respondent is a party. Neither was respondent

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[6] *Id.* at 171.

[7] *Id.* at 170.

obligated to pay the amount of ₱4,624,705.00 for the European Tour of the Group nor did it consent to complying with the terms of the MOA. Respondent asserted that the thumbmark of Sr. Medalle was secured without her consent. Respondent maintained that since it was not a party to the MOA, it is not bound by the provisions stated therein. Respondent counterclaimed for damages.[8]

On 29 November 2006, the RTC ruled in favor of petitioner. The dispositive portion of the Decision reads:

**WHEREFORE, PREMISES CONSIDERED**, Judgment is hereby rendered:

1. Ordering the defendants (1) S.C. Group of Companies Holding Limited Corporation, (2) S.C. Roque Foundation, Inc., (3) Holy Trinity College, Inc., (4) Holy Trinity College Grand Chorale, (5) Holy Trinity Dance Company and (5) Sister Teresita M. Medalle, O.P., to jointly and severally pay the Plaintiff Benjie B. Georg the following:

   1.a. The amount equivalent to Euro Currency of One Hundred Eight-Five Thousand Five Hundred Seventy-Six and Thirty-Seven Deutschmark (DM185,576.37) with the legal interest thereon from May 21, 2001 until fully paid, by depositing the same at the designated account as provided in the Memorandum of Agreement as follows:

   | | |
   |---|---|
   | Account Name | Heinz Georg Gmbh |
   | Name of Bank | Volksbank Sud Siegerland eG |
   | In | Neunkirchen, Germany |
   | Account Number | 210507600 |

   1.b. The amount equivalent to eighteen percent (18%) of the principal amount due in the amount of One Hundred Eight-Five Thousand Five Hundred Seventy-Six and Thirty-Seven Deutschmark (DM186,576.37) plus the accrued interest thereon until fully paid;

   1.c. The amount equivalent to ten percent (10%) of the total amount above-mentioned under paragraph 1.b. as attorney's fees;

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[8] *Id.* at 196-197.

1.d. The amount of One Million Pesos (₱1,000,000.00) by way of Moral Damages;

1.e. The amount of One Million Pesos (₱1,000,000.00) as Exemplary Damages;

1.f. Litigation expenses incurred by the Plaintiff which includes Exhibits S, T, U, V, W, AA-2-d, AA-2-e, AA-2-f, AA-2-G, AA-2-I, AA-2-J, AA-2-k, AA-2-l to AA-2-1-5, AA-2-m to AA-2-m-7, AA-2-N to AA-2-N-3, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, AAA, BBB, CCC.

Cost against the defendants.[9]

Summed up, the findings of the trial court are:

1. The thumbmark appearing in the MOA is that of Sr. Medalle.

2. The Group was formed and organized by Sr. Medalle, in her capacity as the President of the Holy Trinity College, Inc. Said group is subject to the full control and supervision of the school administration, including selection and hiring of trainers, as well as their termination.

3. Sr. Medalle initiated the European Tour of the group in 2001. She even contacted one Dietz in Germany for the arrangement of the tour schedule and accommodation. She also was directly responsible for the procurement of the visa of the Group.

4. Even prior to and at the time of the departure of the Group, Sr. Lina Tuyac (Sr. Tuyac) and Sr. Estrella Tangan (Sr. Tangan), officers of Holy Trinity College, were already aware of the MOA.

5. During the pre-trial, the lawyer of respondent denied that Sr. Medalle's act of affixing her thumbmark was *ultra vires.* The trial court construed this denial as admission that Sr. Medalle acted within the scope of her authority.

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[9] *Id.* at 324-325.

6. When Sr. Medalle affixed her thumbmark in the MOA, it was in her capacity as President of Holy Trinity College and not of the Group.

7. Respondent is deemed to have admitted the genuineness and due execution of the MOA when it failed to specifically make any denial under oath.

8. The doctrine of Corporation by Estoppel operates against respondent. The school administration had itself allowed the existence of the Group and much more allowed its President, Sr. Medalle to operate the same under that calling before the general public and petitioner had truly acted in good faith in dealing with it.

9. The personality of the Holy Trinity College Grand Chorale, the Holy Trinity College Dance Company, Holy Trinity College, Inc. and Sr. Medalle may be disregarded and may well be considered as identical.

10. There was a clear breach of and delay in the performance of the contractual obligation of respondent under the MOA.

On 5 January 2007, petitioner filed a motion for execution pending appeal. Said motion was granted and a corresponding writ was issued by the trial court. This decision was sustained by the Court of Appeals, and later on affirmed by this Court in G.R. No. 180787.

On 9 January 2007, respondent filed a notice of appeal.[10]

In a Decision dated 17 November 2009, the Court of Appeals relieved respondent of any liability for petitioner's monetary claims. The Court of Appeals synthesized the issues into three, thus:

1. Respondent's privity to the loan extended by petitioner and the MOA sued upon:

2. Sr. Medalle's capacity and/or authority to act for and in behalf of appellant in respect to the subject MOA; and

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[10] *Id.* at 350.

3. The applicability of the doctrines of apparent authority and/or corporation by estoppel to the factual and legal millieux of the case.[11]

The Court of Appeals held that the record is bereft of any showing that Sr. Medalle participated in the negotiation, perfection and partial consummation of the contract whereby petitioner advanced the payment of international and domestic tickets required for the Group's European tour. The Court of Appeals found that petitioner had agreed to advance the payment based on the following considerations: 1) the representation made by Enriquez that he was respondent's employee/representative and that the funds were available for said tickets; 2) the supposed confirmation from Dietz that Enriquez was an employee/representative of respondent and that she had been in contact with Sr. Medalle regarding the Group's European tour; and 3) the assurance given by Fr. Vincent Brizuela that Sr. Medalle was, indeed, respondent's President. Petitioner relied on the confirmation of Dietz and did not even contact Sr. Medalle. The Court of Appeals held that petitioner failed to exercise reasonable diligence in ascertaining the existence and extent of Enriquez's authority to act for and in behalf of the Group or for that matter, respondent. The Court of Appeals noted the absence of respondent's name in the MOA, thus it concluded that respondent was clearly not a party to the MOA. The Court of Appeals took exception to the trial court's ruling that respondent admitted the genuineness and due execution of the MOA when it failed to deny the same under oath. The Court of Appeals, citing Section 8, Rule 8 of the Rules of Court, ruled that the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument upon which an action or defense is founded. The Court of Appeals also pointed out that Sr. Medalle affixed her thumbmark on the MOA under the mistaken belief that said agreement would facilitate the release of the donation from the foundation-grantor. The Court of Appeals added that the trial court should have considered that Sr. Medalle was confined at the hospital at that

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[11] *Id.* at 42.

time. In addition, the Court of Appeals ruled that there was no showing that Sr. Medalle was duly authorized by respondent to enter into the subject MOA. According to the Court of Appeals, the Group's general affiliation with respondent cannot be used by petitioner to justify her failure to exercise reasonable diligence in the conduct of her own travel agency business. The doctrine of corporation by estoppel cannot apply to respondent in absence of any showing that it was complicit to or had benefited from said mispresentations.

Aggrieved, petitioner elevated the case to this Court via a petition for review.

First, petitioner questions the admission of the alleged deposition conducted upon Sr. Medalle when the same was not presented in evidence by respondent's counsel. Petitioner adds that there was no order from the trial court allowing such deposition. Petitioner also claims that the requisite certification that should accompany the deposition is defective.

Second, petitioner insists that Sr. Medalle was in full possession of her mental faculties when she affixed her thumbmark on the MOA and that the same was read in full to Sr. Medalle. Petitioner asserts that no single witness was presented to prove that Sr. Medalle's illness had impaired her judgment.

Third, petitioner argues that the Court of Appeals merely relied on respondent's assertion that it is not a party to the MOA without considering the evidence presented by petitioner. Petitioner avers that respondent's counsel had acknowledged during pre-trial that respondent is deemed to have admitted the genuineness and due execution of the MOA. Thus, respondent cannot be allowed for the first time on appeal to claim that it is not a party to the MOA.

Fourth, petitioner contends that the Holy Trinity College Grand Chorale and Holy Trinity College Dance Company were both created by Sr. Medalle in her capacity as President of respondent. These groups were also under the dominion and control of Sr. Medalle and/or respondent. Petitioner refutes the assertion of respondent that Sr. Medalle was no longer the

President of Holy Trinity College when the MOA was executed in view of the conflicting statements of respondent's witnesses.

Fifth, petitioner opposes the consideration given by the appellate court to the appointment papers of Sr. Tangan as President of the Holy Trinity College to prove that Sr. Medalle is only allowed to spend ₱30,000.00 worth of non-budgeted and extraordinary expenses, thereby proving that she was not authorized by respondent to enter into an MOA. Petitioner cites instances where Sr. Medalle acted in her capacity as President of Holy Trinity College without the imprimatur of respondent.

Sixth, petitioner claims that the appellate court cannot absolve respondent from liability while affirming the decision of the trial court with respect to the foundation-grantor because the liability of the latter is joint and solidary with respondent.

The primordial issue is whether respondent is liable under the MOA. Respondent primarily argues that it is not a party to the MOA. Petitioner claims otherwise because Sr. Medalle, in her capacity as President of Holy Trinity College, affixed her thumbmark in the MOA. Two sub-issues necessarily arise therefrom: 1) whether Sister Medalle freely gave her full consent to the MOA by affixing her thumbmark and 2) whether she is authorized by respondent to enter into the MOA.

The issues presented involve questions of fact. A question of fact exists when a doubt or difference arises as to the truth or the falsehood of alleged facts; and when there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[12]

As a rule, the findings of fact of the Court of Appeals are final and conclusive and this Court will not review them on appeal,[13]

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[12] *National Power Corporation v. Diato-Bernal*, 653 Phil. 345, 351 (2010) citing *Santos v. Committee on Claims Settlements, et al.,* 602 Phil. 84, 92 (2009).

[13] *Metropolitan Bank and Trust Company v. CPR Promotions*, G.R. No. 200567, 22 June 2015.

subject to the following exceptions: (1) when the findings are grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioners main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[14]

Exception No. 7 obtains in this case. The findings of the RTC are contrary to those of the Court of Appeals.

The essential requisites of a contract under Article 1318 of the New Civil Code are:

(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established.

The validity of the MOA is being assailed for a defect in consent. Under Article 1330 of the Civil Code, consent may be vitiated by any of the following: (1) mistake, (2) violence, (3) intimidation, (4) undue influence, and (5) fraud. Under the same provision, the contract becomes voidable.

Petitioner claims that Sr. Medalle knew fully well the import of the MOA when she affixed her thumbmark therein while respondent alleges that fraud was employed to induce Sr. Medalle to affix her thumbmark.

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[14] *Sps. Alcaraz v. Arante*, 700 Phil. 614, 624-625 (2012).

There is fraud when one party is induced by the other to enter into a contract, through and solely because of the latter's insidious words or machinations. But not all forms of fraud can vitiate consent. Under Article 1330, fraud refers to *dolo causante* or causal fraud, in which, prior to or simultaneous with execution of a contract, one party secures the consent of the other by using deception, without which such consent would not have been given.[15]

Between the two parties, we are inclined to give credence to petitioner. First, the trial court did not give probative weight to the deposition of Sr. Medalle basically stating that respondent's counsel failed to conform to Section 20, Rule 23 of the Rules of Court which provides that:

Section 20. *Certification, and filing by officer.* — The officer shall certify on the deposition that the witness was duly sworn to by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope indorsed with the title of the action and marked "Deposition of (here insert the name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered mail to the clerk thereof for filing.

Indeed, there is no record of any certification from Notary Public Romeo Juayno stating that the witness, Sr. Medalle in this case, was sworn to by him and that the deposition is a true record of the testimony given by Sr. Medalle. Furthermore, petitioner correctly noted that respondent's counsel did not seek a leave of court to conduct a deposition in violation of Section 1, Rule 23 of the Rules of Court:

Section 1. *Depositions pending action, when may be taken.* — By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written

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[15] *Archipelago Management and Marketing Corp. v. Court of Appeals*, 359 Phil. 363, 374 (1998).

interrogatories. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 21. Depositions shall be taken only in accordance with these rules. The deposition of a person confined in prison may be taken by leave of court on such terms as the court prescribes.

In *Republic of the Phils. v. Sandiganbayan*,[16] we held that:

Depositions pending action may be conducted by oral examination or written interrogatories, and may be taken at the instance of any party, with or without leave of court. Leave of court is not necessary to take a deposition after an answer to the complaint has been served. It is only when an answer has not yet been filed (but jurisdiction has been obtained over any defendant or over property subject of the action) that prior leave of court is required. The reason for this is that before filing of the answer, the issues are not yet joined and the disputed facts are not clear.[17]

In this case, respondent's counsel filed a Notice of Deposition for the Taking of Deposition on 28 October 2002. The Answer with Counterclaim was only filed on 21 February 2005. In this instance, respondent should have asked for leave of court. Considering that the trial court has the discretion to decide whether a deposition may or may not be taken, it follows that it also has the discretion to disregard a deposition for non-compliance with the rules.

Second, Sr. Medalle is presumed to know the import of her thumbmark in the MOA. While she was indeed confined at the UST Hospital at that time, respondent however failed to prove that Sr. Medalle was too ill to comprehend the terms of the contract. True, Sr. Medalle suffered a stroke but respondent did not present any evidence to show that her mental faculty was impaired by her illness.

Moreover, there is nothing in the deposition that tends to prove that Sr. Medalle's consent was vitiated.

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[16] 410 Phil. 536 (2001).

[17] *Id.* at 548-549.

Sr. Medalle claimed that she affixed her thumbmark on the MOA on the basis of Enriquez's representation that her signature/thumbmark is necessary to facilitate the release of the loan. As intended, the affixing of her thumbmark in fact caused the immediate release of the loan. Petitioner's claim that the provisions of the MOA were read to Sr. Medalle was found credible by the Court of Appeals. The Court of Appeals discussed at length how proper care and caution was taken by Atty. Belarmino to verify what the Groups's trip was all about and the extent of the authority of Sr. Medalle regarding the project. Thus:

It was in connection with the [Group's] 2001 European tour that, on April 21, 2001, one Edward or "Jojo" Enriquez contacted [petitioner] Benjie Georg, a Filipina, who as the wife of the German national Heinz Georg, owned and operated the travel agency D' Travellers Reiseburo Georg in Germany. Claiming to have been referred by Leonora Dietz, another Filipina-German who has gained prominence for helping various cultural groups from the Philippines in obtaining engagements, financial assistance, travel requirements and accommodations in Europe, Edward Enriquez represented himself as an employee of appellant, duly authorized by Sr. [Medalle] to arrange [the Group's] impending engagements in Greece, Italy, Spain and Germany. Given the group's fixed schedule and the 2 weeks purportedly received by the bank for clearing the money allotted therefor, Edward Enriquez sought [petitioner's] assistance in advancing the payment of the reserved airline tickets of 48 people composed of 6 [of the Group's] staff, 25 choral[e] members and 17 dancers.

After talking to Leonora Dietz who confirmed the fact that she had been communicating with Sr. [Medalle] regarding [the Group's] approaching European tour and verifying from a priest that said nun, was, indeed [respondent's] President, [petitioner] decided to help the group and, accordingly, contacted her brother, Atty. Benjamin Belarmino, Jr., (Atty. Belarmino) who happened to be in Manila in the morning of April 24, 2001, a Saturday. Apprised of the situation by his sister, it appears that Atty. Belarmino received a phone call from Edward Enriquez who requested for a meeting at a coffee shop in Century Park Hotel in Malate. Repairing to said place at around 11:00 a.m. of the same day, Atty. Belarmino was introduced by Edward Enriquez, to one Violeta Buenaventura, the Vice-President of S.C. Roque Foundation, Inc. (SRFI), an employee of said Foundation and

one Gardenia Banez. Assured by Edward Enriquez that he was duly authorized to arrange [the Groups] tour by Sr. [Medalle] who was, however, confined at the University of Sto. Tomas (UST) Hospital at the time, Atty. Belarmino was further informed that the group was going to receive a donation of about ₱20,000,000.00 from SRFI.

Told that the reservation for the domestic and airline tickets of the group will be forfeited if not paid at 12:00 o'clock noon of the same day, Atty. Belarmino asked for the telephone number of Sr. [Medalle] but was instead given [respondent's] number in Palawan. Receiving no answer at said number, Atty. Belarmino was assured by Edward Enriquez that he was willing to accompany him to the UST Hospital after the subject tickets were paid as per deadline. For added assurance, it appears that Atty. Belarmino asked for a talk with Solminio Roque, the President of SRFI, who was supposed to be at a Makati branch of Union Bank, processing the clearing of the ₱20,000,000.00 donation to [the Group]. While he was able to talk to Solminio Roque who confirmed that he was indeed processing the donation at said bank, Atty. Belarmino was advised that a meeting between them just then was not feasible in view of the aforesaid deadline. The latter's request for a talk with an employee of the bank to ascertain the veracity of the former's whereabouts was likewise thwarted on the supposed ground that the same would be violative of the "Bank Secrecy Law."

As further precaution, Atty. Belarmino asked for the verification of the reservation with the Saudia Airlines and the Philippine Airlines which confirmed the group's booking for international and domestic flights. Shown a brochure which detailed the artistic achievements and charitable vision-mission of the [Group], Atty. Belarmino was not only impressed but became concerned that the cancellation of the group's imminent European tour would — as he was made to understand — mean the end of the scholarship for the participants who were mostly graduating students. Upon the understanding that the money advanced would be paid within 15 days or even on the same day should Solminio Roque be able to cause the bank's release of the intended donation, Atty. Belarmino approved [petitioner's] accommodation of the group's domestic and international airline tickets at about 12:30 p.m. and, because of Edward Enriquez' added entreaties, even used his personal money in advancing payment of the domestic airline tickets for Palawan-Iloilo leg of the group's travel. As a final precaution, Atty. Belarmino likewise confirmed with the aforesaid airline companies that the subject tickets had, indeed, been paid already.

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Forthwith, Atty. Belarmino and Edward Enriquez proceeded to the UST Hospital where he was introduced to Sr. [Medalle] who was confined thereat following a stroke she appears to have suffered. Although unable to speak clearly, Atty. Belarmino claimed that Sr. [Medalle] had full mental capacity and was even able to acknowledge that she was, indeed, [respondent's] incumbent President and to confirm that the students named in the documents used in requesting visas from the Spanish Embassy were participants in [the Group's] European Tour. At the latter's room were 2 or 3 nuns and several students, from whose conversation regarding the tour Atty. Belarmino learned that the same was not the first of its kind authorized by Sr. [Medalle]. After perusing the MOA which was additionally read to her in full by Edward Enriquez, Sr. [Medalle] reported said "Yes" in a soft voice and nodded her head before affixing her thumbmark on the document to signify her assent thereto.[18]

It simply defies logic that Atty. Belarmino would employ fraud just so Sr. Medalle could affix her thumbmark to facilitate the release of the loan coming from Atty. Belarmino himself.

At this juncture, it should be emphasized that a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents absent any clear and convincing proof to the contrary.[19]

Third, respondent claims that Sr. Medalle was not authorized by the corporation to enter into any loan agreement thus the MOA executed was null and void for being *ultra vires.* Petitioner invokes, as refutation, the doctrine of apparent authority.

Respondent's denial of privity to the loan contract was based on the following reasons: 1) that respondent's name does not appear on the MOA; 2) that Sr. Medalle was no longer the President of Holy Trinity College when she affixed her thumbmark on the MOA; and 3) that Sr. Medalle was not authorized by respondent through a board resolution to enter into such agreement.

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[18] *Rollo*, pp. 19-24.

[19] *Spouses Palada v. Solid Bank Corporation*, 668 Phil. 172, 184 (2011).

The trial court categorically ruled that Sr. Medalle affixed her thumbmark as President of Holy Trinity College and therefore, respondent is a party to the MOA, *viz*:

From the foregoing discussion and gathering also from the circumstances that is more or less contemporaneous and subsequent to the execution of the Memorandum of Agreement, this [c]ourt holds the view that when Sr. Teresita Medalle. O.P. affixed her thumb mark in the Memorandum of Agreement, that it was in her capacity as the President of the Holy Trinity College and not that of the Holy Trinity College Grand Chorale and Dance Company.

As aptly found the adjective "ITS" in the Memorandum of Agreement which describes the Parties thereat as:

> HOLY TRINITY COLLEGE GRAND CHORALE & DANCE COMPANY Co., with postal address at Holy Trinity College, Puerto Princesa City, Palawan, herein represented by its President Sister TERESITA M. MEDALLE, O.P. and/or its attorney-in-fact EDWARD V. ENRIQUEZ. . .

is descriptive that the entity being referred to is indeed the Holy Trinity College. Otherwise, if what were represented to by Sr. Teresita Medalle, O.P. was the Holy Trinity College Grand Chorale and Dance Co., it might have been written as:

> Holy Trinity College Grand Chorale & Dance Company, represented by its President Sister Medalle, O.P., and/or its attorney-in-fact Edward V. Enriquez, with postal address at Holy Trinity College, Puerto Princesa City Palawan

The [c]ourt gives credence though to the testimony of Jearold Loyola that indeed the said Grand Chorale and Dance Company are not registered with the Securities and Exchange Commission and is therefore possessing no juridical personality and merely owe its life and existence through the school administration of the Holy Trinity College through its President, Holy Trinity College. There is no doubt indeed, that Sister Teresita Medalle was the President of the Holy Trinity College. She was never at any given time the President of the Holy Trinity College Grand Chorale & Dance Company, which is just similar to any science or math club in the school. We do not expect much less find it absurd that Sister Teresita Medalle, O.P. being the school President and Vice Chairman of the Board of Trustees would allow herself to go down to her level and hold a position as a President of student organization.

With the foregoing disquisitions, the import of the participation of Sister Teresita Medalle, O.P. in that Memorandum of Agreement, was in her capacity as the Holy Trinity College. Inc., Puerto Princesa City, Palawan. This Court cannot isolate the fact that right at the very commencement of conceptualization of the said European Tour 2001 sometime in 2001, it was Sister Teresita Medalle who spearheaded the whole activity. As above-mentioned, Sister Teresita Medalle personally communicated with Leonor Dietz, their coordinator in Germany and has herself made arrangement for the procurement of the visa of the group. The Grand Chorale and Dance Co., as testified to by Jearold Loyola have no hands (sic) at all in the financial aspect of the group. It was also Sister Teresita Medalle who arranges for the itinerary of the group and they have no discretion of disobeying. This makes clear to the understanding of the [c]ourt that [n]ot all contracts are drawn in perfection. Otherwise, there would have been no case at all that reached the courts of law.[20]

Per records, it appears that the Holy Trinity Grand Chorale and Dance Company were actually two separate entities formed and organized by Sr. Medalle in her capacity as President of Holy Trinity College. Sr. Medalle made the following admission in her deposition:

Q: Sister, do you know or are you familiar with [the] group named Holy Trinity College Dance and Grand Choral[e]?
A: Yes.

Q: Why do you know that group?
A: I was the one who organized this group.

Q: When did you organize this group?
A: In 1987 when I assumed my presidency at Holy Trinity.

Q: How did you organize the group, sister?
A: I selected the members from the different departments of the school.

Q: Who gave the name Holy Trinity College Dance and Grand Choral[e] Group?
A: I am the one.

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[20] *Rollo*, pp. 315-316.

Q: Why did you give them this name Holy Trinity College Dance Grand and Choral[e] Group?

A: Because the members belong to the school.[21]

Moreover, it was established, through the testimonies of the Group's Artistic Director, Jearold Loyola, the Musical Director, and Vocal Coach Errol Gallespen, that they were hired and given honorarium by Sr. Medalle. The costumes of the Group were financed by respondent. They also testified that all the performances of the group were directly under the supervision of the school administration. Effectively, respondent has control and supervision of the Group particularly in the selection, hiring and termination of the members. The trial court was convinced that the Group derived its existence and continuous operation from the school administration. Pertinently, the Court found:

> The [c]ourt also found from the testimony of Jearold Loyola that in fact, the name Holy Trinity College Grand Chorale and Dance Company, is a joint common calling of two (2) separate performing groups, that is:
>
> Holy Trinity College Grand Chorale, and
> Holy Trinity College Dance Company.
>
> The Holy Trinity College Grand Chorale is being headed by Errol Gallespen as the Musical Director while the Holy Trinity College Dance Company is headed by Jearold Loyola as the Artistic Director. Because they usually perform together; that for brevity they were commonly called as Holy Trinity College Grand Chorale and Dance Company.
>
> The nature of the said performing groups as well as their relation with the Memorandum of Agreement under consideration, is briefly described by Jearold Loyola (TSN, November 19, 2001, page 17-21) as follows:
>
> Q You are not aware whether the Holy Trinity College Grand Chorale and Dance Company has registration to vest it with juridical personality. What is the status of this in the school?
>
> A It is an organization under the Holy Trinity College. It is like a Chemistry Group, or like a Math group.

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[21] *Id.* at 549-550.

Q You mean to say that they are the official Dance Company of the Holy Trinity College?
A Yes, sir.

Q Who conducts the administration of the activities, the itineraries, how and when you are going to perform?
A It is basically under the office of Sister Tess.

Q What is basically the function or responsibility of the group? I am referring to the Grand Chorale and Dance Company?
A Both performing groups represent the school in any endeavor that is in the fields of arts, like music, and in the field of dance.

Q Does the Holy Trinity College Grand Chorale & Dance Company have, in any manner, the power to control its own activity if the administration of the Holy Trinity College, particularly the President, Sister Teresita Medalle, would say otherwise?
A The administration has full control of the group.

Q So, you cannot make any performance, except with the approval of the administration?
A Yes, precisely.

Q You made mention that the Holy Trinity College Grand Chorale and Dance Company performed abroad on April to September this year. Do you know who initiated this trip to Europe?
A Who decides for that trip?

Q Yes.
A The administration.

Q Who in particular[?]
A Sister Teresita Medalle.

Q You are referring to the President, Sister Teresita Medalle?
A Yes, sir.

Q How about the funding for this European Tour of this year, do you know whom the funding came from?
A I do not have any idea.

Q Attached to the record as Annex "A" of the Complaint is a Memorandum of Agreement with Deed of Assignment,

consisting of six (6) pages. Can you go over the same for a while?

A Yes, this is the Memorandum of Agreement.

Q When, for the first time, have you seen a copy of this Memorandum of Agreement?

A I cannot tell the exact date, but I think it is between August and September of this year.

Q Under what circumstances did you come to a knowledge of that Memorandum of Agreement?

A I think the new President was sent by the Court these materials, and she photocopied it and sent it to us.

Q You are telling us that the Holy Trinity College Grand Chorale and Dance Company does not have knowledge or participation in the execution of this Memorandum of Agreement?

A Yes. That was the first time I saw this paper when it was sent from here.

Not only that the said Holy Trinity College Grand Chorale and Dance Company were formed and organized by Sr. Teresita Medalle, O.P. during her incumbency and capacity as the President of the Holy Trinity College, but the said performing groups were likewise subject to the full control and supervision of the school administration as well as payment of Honorarium of Jearold Loyola, Errol Gallespen and John Pamintuan. Thusly, the testimony of Jearold Loyola is quite revealing, as follows (TSN, November 19, 2001, pages 7 to 11):

Q Mister witness, you said that you are the Artistic Director of the Holy Trinity College Grand Chorale. Since when have you been connected with this group as the Artistic Director?

A Early 1997, I usually come and visit the school, but I worked there full time since 1998.

Q In your capacity as the Artistic Director of the Holy Trinity College Dance Company, what compensation if any, do you have from the school?

A They only gave me honorarium. I was not teaching there, [s]o I was given only honorarium.

Q When you say you were receiving Honorarium, how much did you receive?

A In the beginning, I received ₱20,000.00 a month, but it was raised to ₱40,000.00 when we went abroad.

Q Since when were you given honorarium?
A Based on my recollection, around August-September of 1999.

Q You said you are the Artistic Director of the Holy Trinity College Dance Company. Can you inform the court of the activity and your responsibility in such a group?
A Basically, I handled the rehearsals and the concept of the production. After making the concept, we do the rehearsals and then the performance. I also handle the lights and other things needed for the production.

Q Where do you get the fundings for these activities?
A I just got if from the school.

Q When you say from the school, who in particular gave you funding?
A Directly from the Secretary of Sister Tess.

Q How about the expenses for the rehearsals?
A I do not have any idea where they get it, but if we require some things to buy, they usually give us the things but I do not have the money for that.

Q You mean to say these are from the school administration?
A Yes, sir.

Q How about the performances, can you tell the Honorable Court when and where you have been performing?
A We performed locally upon invitations of the Mayor and Governor in Puerto Princesa. We also performed at the Cultural Center of the Philippines, and also in Manila and abroad.

Q In these performances, who gave the finances for these performances in Palawan, Manila and abroad?
A I do not know who usually give the fundings, but they subsidize the trip. They only give ₱20,000.00 for the performance and I do not know where they get the other money.

Q When you performed in Palawan or Manila or even abroad, what are you representing?
A Holy Trinity College Grand Chorale and Dance Company.

Q When you say this, you are in effect representing the Holy Trinity College?
A Yes, sir.

x x x x x x x x x

The Musical Director of the Holy Trinity College Grand Chorale on the other hand testified as follows (TSN, January 16, 2002, pp. 80-83):

Q Mr. Gallespen, you said that you are from Puerto Princesa City Palawan. Do you know a person by the name of Sister Teresita Medalle?
A I am not from Puerto Princesa, Palawan, I am from Quezon City, sir.

Q Yes, I got confused, your Honor. Do you know a person by the name of Sister Teresita Medalle in Puerto Princesa Medalle in Puerto Princesa City, Palawan.
A Yes, sir.

Q Can you tell us why and how you came to know her?
A She was the one who got me where I was working before.

Q As what?
A As Musical Director of the school's chorale group of Puerto Princesa City.

Q Can you tell the Court the name of that particular group wherein you were engaged by Sister Teresita Medalle as Musical Director?
A The Holy Trinity College Grand Chorale and Dance Company, Sir.

Q Can you inform this Honorable Court if this Holy Trinity College Grand Chorale & Dance Co. was registered with the Securities and Exchange Commission (SEC)?
A I am not sure, Sir. I don't think it was registered. But I know of a foundation which registered the same.

Q Since when have you been engaged as the Musical Director of the Holy Trinity College?
A Since 1993, sir.

Q And since 1993, what compensation if any, did you receive from the Holy Trinity College?

A When I started, I was receiving a thousand pesos a day. And that time, I was then already receiving ₱50,000.00 a month.

Q Who paid you that ₱50,000.00 a month[?]
A The school[,] sir.

Q Who directly pays you?
A Sister Tess, sir. And she has a secretary.

In the same manner that the Vocal Coach John Pamintuan was also being employed and was paid compensation for his services by the school administration, as testified to by Leonor Dietz, as follows (TSN, Leonor Dietz, June 3, 2002, page 3):

ATTY. BELARMINO: What is the position if you know, of John Pamintuan in reference to Holy Trinity College in Puerto Princesa City, Palawan, Philippines?

MRS. DIETZ: He was a Vocal Coach for the Choir and I think he was under the payroll of the University

ATTY. BELARMINO: I see. When you say that he is under the payroll of the school, he is receiving a regular compensation as a vocal coach.

MRS. DIETZ: Yes.

ATTY. BELARMINO: I see.

MRS. DIETZ: According to him.

In fine, the school administration of the Holy Trinity College has control and supervision of the Grand Chorale and Dance Company particularly in the selection and hiring of its trainers but as to their termination as well. A fortiori, Jearold Loyola and Errol Gallespen were formally severed per April 30, 2001 Letter of Sr. Estrella Tangan. This clearly shows that indeed, the Holy Trinity College Grand Chorale and Dance Company were both under the power of the school administration. Moreover, it is also clear that the costumes were likewise financed by the school administration (Exhibit 1; TSN, January 16, 2002, page 22):

1. The list of members of the Chorale & Dance Troupe
2. Inventory of the costumes which are financed by the school & turn-over of the same to the Office of the Acting President, Sr. Lina Tuyac, O.P.

x x x x x x x x x

Q Mr. Witness, you have mentioned during the last hearing that the manner of the operation of the Holy Trinity College Grand Chorale & Dance Co. is under the control and administration of the Holy Trinity College. And in that letter of April 13, 2001, it mentions that you were required to submit an inventory of costumes which were financed by the school. Will you tell us whether those costumes used by the Holy Trinity College Grand Chorale & Dance Co., are owned by the Holy Trinity College?

A Yes, sir.

Q It is mentioned in this letter that the said group is being financed by the Holy Trinity College Administration, will you tell us whether all the expenses were really shouldered or financed by the Holy Trinity College?

A Yes, sir, they were, because we got the money from them. If we wanted to buy our costumes or anything else, we ask it from Sister Tess.

Q And this Sister Tess you are referring to is Sister Teresita Medalle?

A Yes, sir.

Q And she was giving that to you in her capacity as President of the Holy Trinity College?

A Yes, sir.

Q Mr. witness, in those instances when you had performances, etc., and wherein it was being financed by the school, you also derived income. Who t[h]en took custody or possession of the income, if any?

A All the financial matters were handled by Sister Tess because we did not question, or talk about financial matters of the group. Whenever we receive donation or something, it was given directly to Sister Tess.

Q Can you give example to this Honorable Court wherein a certain person, entity or organization had invited you to perform?

A All the letters and invitations for us to perform were coursed thru the Office of the President.

COURT:

President of what?

WITNESS:

A Of the Holy Trinity College and addressed to Sister Tess, Your Honor.

ATTY. BELARMINO

Q This letter or invitation was addressed to the Holy Trinity College. How then did your group able to manifest its consent or disagreement to the invitation?

A Usually, they just give instructions if they had accepted the invitation. If they did not overlap with our other schedules, then they would tell us what performances they preferred. They have the options to choose what performances we have to do.

Q Are you telling us that whatever performances you would have undertaken was coursed thru the President of the Holy Trinity College?

A Yes, Sir.

Q Did you have any discretion or option in rejecting those invitations?

A We didn't have any option. But we tell them if we can do it. We can give our opinion but we have no right to refuse.

Q Was there any instance wherein an invitation was accepted by the President of the Holy Trinity College but the Holy Trinity College Grand Chorale & Dance Co. refused to perform?

A None, sir.

Q Was there also any instance wherein you performed either in Palawan, in the Philippines, or abroad wherein it was without the knowledge of the President of the Holy Trinity College?

A Never, because all of our performances were official. Since we are practicing and rehearsing in school then we could not perform without the school's knowledge.

Q You have mentioned that you were practicing and rehearing in school?

A Yes, sir.

Q Are you trying to tell to the Court that you had a particular place given by the school were you made your practice or rehearsals?

A We rehearse at the lobby at 8:30 after the last class until 11:00 or 12:00, everyday.

Q Your place of rehearsal was then at the lobby of the school?
A [Y]es, sir.

Q Was there any instance in the course of those practices that your group was prohibited by any officer or official of the school?
A The only instance or time when we were not allowed to rehearse in the lobby was when there was a General PTA Meeting or any other activity that needed the lobby, or was being used by any department. Nevertheless, we also had to get the approval of Sister Tess.

Q Mr. Witness, prior to or sometime in April 2001, will you inform the Court as to how many performances have you conducted, both local and abroad?
A We had a lot, sir.

Q More or less, would it be 20, 30 or 50?
A Maybe, from 20 to 30 performances in a year.

Q You also mentioned that you were indeed with Holy Trinity College since 1997?
A Yes, sir.

Q From 1997 and until April 2001, but before that European Tour, could you inform the [c]ourt how many performances were done by your group.
A More than a hundred, sir.

Q More than a hundred, Mr. Witness? Of this more than a hundred performances both local and abroad, are you aware of any communication, memorandum, or order from any officer of the Holy Trinity College or congregation where you were denied recognition or permission to conduct performances?
A None, sir. They always recognized us as the official group of the Holy Trinity College.

Q Was there any instance wherein any officer of the Holy Trinity College or congregation sent you communication of whatever nature wherein they said that your prior performances were not official in the name of the Holy Trinity College after you had that performance?
A None, sir.

x x x x x x x x x

Q Mr. Witness, of all those over a hundred performances with the Holy Trinity College, can you inform the [c]ourt where did you get the finances?
A What do you mean, sir?

Q Okay, let me elaborate. Can you inform the Court as to who financed those more than a hundred performances you had?
A All the things were shouldered by the Holy Trinity College. That is what I know, sir.

Q Mr. Witness, what was the general purpose why the Holy Trinity College was maintaining the performances of the Holy Trinity College Grand Chorale & Dance Co.?
A The purpose of the Grand Chorale was to give the students some scholarships. That was basically the main purpose why we advertised. The income we got from our performances were for the maintenance of the group and also of the scholarship of the children.

Q Can you tell us how those children became scholars?
A We based it on their performances. They were evaluated based on their performances. When we say performances, this includes their schedules and attendance, including their attitudes. They would also undergo a series of auditions in order to be taken in as trainees, and then end up as a regular scholars.

Q When you say scholar, are you telling us of a full scholar?
A Not actually, sir, because they were paying ₱500.00 for the internet services.

Q Can you tell the Court if you know, that by reason of this scholarship, how many students had finished college?
A There had been so many graduates, sir. During my stint with the school, we had 3 to 6 students in year.

Q That was around 1997?
A Up to 2001, sir.

(TSN, Jearold Loyola, January 16, 2001, pages 26 to 41)

With the foregoing, the [c]ourt is convinced that the indeed the Holy Trinity College Grand Chorale and Dance Company do not

have a life of its own and merely derive its creation, existence and continued operation or performance at the hands of the school administration. Without the decision of the school administration, the said Chorale and Dance Company is completely inoperative.[22]

Sr. Aurelia Navarro (Sr. Navarro) claimed that she was appointed as Acting President on 21 March 2001. The trial court correctly observed some inconsistencies in the statements of Sr. Tangan and Sr. Navarro, to wit:

This [c]ourt also finds it confusing as well, when and if at all Sister Teresita Medalle, ceased to be the President of the Holy Trinity College. The own testimonial and documentary evidence of the [respondent] Holy Trinity College is seemingly conflicting and more so that the defense is conflicting.

It was admitted, though by both parties that the thumb mark in the Memorandum of Agreement dated April 24, 2001, was that of Sister Teresita Medalle during which period Sister Aurelia Navarro so testified that Sister Teresita Medalle was the President per appointment dated March 27, 2001 issued by Sr. Ma. Aurora R. Villanueva, Prioress General of Congregation of St. Catherine of Siena (Exhibit 1). She knows this because she was the Secretary attesting to the said appointment and considering that she was still a member of the Board of Trustees during that date and until the year 2003.

The said appointment letter states, thus:

> I direct you to accept the office of President of the Holy Trinity College and to full your duties with love and diligence for the good of the congregation and for the welfare of our Holy Mother Church.
>
> It did not appear though that Sister Estrella Tangan accepted (as required) the said appointment. No evidence was on this matter was presented.

On the other hand, the April 23, 2001 Letter of Estrella Tangan (Exhibit G) herself to Jearold Loyola and Errol Gallespen, was clear to say that, it was not Sister Estrella Tangan who succeeded as the President or acted as President but Sister Lina Tuyac, O.P. (TSN, Jearold Loyola, January 16, 2002, page 22):

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[22] *Id.* at 283-293.

2. Inventory of the costumes which are financed by the school & turn-over of the same to the Office of the Acting President, Sr. Lina Tuyac, O.P.

From the testimony of Sister Estrella Tangan (TSN, November 20, 2002, page 12), Sister Lina Tuyac was then the Acting President from March 22, 2001 until the end of May 2001, as follows:

Q Sister, you mentioned that it was Sister Lina Tuyac who was acting president, can you tell this Honorable Court from what time she was acting president of the Holy Trinity College?
A From [M]arch 22 until I formally to assume responsibility.

Q Until what time?
A When I reported to Palawan sometime last week of May.

However, when Sister Aurelia Navarro was presented on February 2, 2006 she declared among others (TSN, Aurelia Navarro, February 2, 2006, page 43):

Q Until today, Sister Teresita Medalle still the President of the Holy Trinity College?
A Yes, sir.[23] (Emphasis omitted)

Sr. Medalle, as President of Holy Trinity, is clothed with sufficient authority to enter into a loan agreement. As held by the trial court, the Holy Trinity College's Board of Trustees never contested the standing of the Dance and Chorale Group and had in fact lent its support in the form of sponsoring uniforms or freely allowed the school premises to be used by the group for their practice sessions. In addition, petitioner was correct in citing snippets of Sr. Navarro's testimony to prove that the Board of Trustees, the administration, as well as the congregation to which they belong have consented or ratified the actions of Sr. Medalle, thus:

1. The [Group] was created and initiated by Sr. Teresita Medalle as President of the Holy Trinity College. This was her project and she was in charge.

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[23] *Id.* at 314-315.

2. The Board of Trustees of the Holy Trinity College came to know about the creation of the [Group], but they did not discuss it in the Board Meeting.
3. Sr. Teresita Medalle was never asked of the reason why she created the [Group];
4. Sr. Aurelia Navarro as well as the Board of Trustee, has not in any instance since the creation of the Holy Trinity College, objected to questioned Sr. Teresita Medalle to refrain from performing any act which refers to the activity of the [Group];
5. The Board of Trustees has not in any instance called the attention or enjoined Sr. Teresita Medalle in the furtherance of all the activities of the [Group];
6. The Board of Trustees never questioned Sr. Teresita Medalle;
7. The Dominican Order for St. Catherine of Siena is the congregation which runs the Holy Trinity College. It did not disown Sr. Teresita Medalle or the [Group].
8. The Board of Trustees of the Holy Trinity College did not release written board resolution wherein the Board is expressly not recognizing and not in any manner owning responsibility arising from the existence or performance activity of the [Group]. It was not even the subject of any agenda.
9. Not even one Member of the Board of Trustees offered or suggested at the very least the propriety or legality or the responsibility of the [Group] in any of the board meeting.
10. The members of the [Group] are being made scholars of the Holy Trinity College.
11. The practice of the [Group] are being made inside the premises of the Holy Trinity College and were made during class hours, but they were never questioned;
12. Edward Enriquez is an employee of the Holy Trinity College, a faculty member;
13. The General Lake headed by the Mother General has the authority to amend or modify, revoke any activity which was performed by its subordinates which includes Sr. Teresita Medalle in her capacity as the President as well as Sr. Estrella Tangan.

14. The General Lake knew about the Memorandum of Agreement subject of this case but this matter was never discussed in any of its meeting.

15. The Board of Trustees of the Holy Trinity College did not pass or adopt a Board Resolution wherein they are not recognizing or they repudiating the Memorandum of Agreement after they came to know about its existence.

16. The General Lake has not come out with any document wherein [they] repudiated or revoke the Memorandum of Agreement.

17. According to the witness, the manner by the Memorandum of Agreement was executed or entered into by Sr. Teresita Medalle was not in accordance with the rules and regulations of the [Group] as well as that of the Congregation of Siena and notwithstanding the fact that the General lake came to know about this contravention of the rules, nothing was done officially to vindicate the legality or violation committed against its own rules and regulations.[24]

Assuming *arguendo* that Sr. Medalle was not authorized by the Holy Trinity College Board, the doctrine of apparent authority applies in this case.

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.[25]

The existence of apparent authority 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

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[24] *Id.* at 137-139.

[25] *Advance Paper Corp. v. Arma Traders Corp. et al.*, 723 Phil. 401, 417 (2013) citing *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 865 (1998) further citing *Francisco v. Government Service Insurance System*, 117 Phil. 586, 594 (1963); and *Maharlika Publishing Corp. v. Tagle,* 226 Phil. 456, 469 (1986).

him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.[26]

In this case, Sr. Medalle formed and organized the Group. She had been giving financial support to the Group, in her capacity as President of Holy Trinity College. Sr. Navarro admitted that the Board of Trustees never questioned the existence and activities of the Group. Thus, any agreement or contract entered into by Sr. Medalle as President of Holy Trinity College relating to the Group bears the consent and approval of respondent. It is through these dynamics that we cannot fault petitioner for relying on Sr. Medalle's authority to transact with petitioner.

Finding that Sr. Medalle possessed full mental faculty in affixing her thumbmark in the MOA and that respondent is hereby bound by her actions, we reverse the ruling of the Court of Appeals.

**WHEREFORE,** the instant petition is **GRANTED**. The Decision of the Court of Appeals dated 17 November 2009 in CA-G.R. CV No. 89990 is **REVERSED** and **SET ASIDE**. The Decision dated 29 November 2006 of the Regional Trial Court, Branch 15, Tabaco City in Civil Case No. T-2161 is hereby **REINSTATED** *in toto*.

**SO ORDERED.**

*Carpio,*[*] *Velasco, Jr. (Chairperson), Peralta,* and *Jardeleza, JJ.,* concur.

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[26] *Id.* at 418 citing *Inter-Asia Investments Ind., Inc. v. Court of Appeals*, 451 Phil. 554, 560 (2003) further citing *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, 357 Phil. 850, 864 (1998).

[*] Additional Member per Raffle dated 22 June 2016.

**THIRD DIVISION**

[G.R. Nos. 194763-64. July 20, 2016]

**WILFRED GACUS YAMSON, Assistant General Manager A, REY CAÑETE CHAVEZ, Department Manager C, ARNOLD DOMINGO NAVALES, Department Manager C, ROSINDO JAPAY ALMONTE, Division Manager C, ALFONSO EDEN LAID, Assistant General Manager A, and WILLIAM V. GUILLEN, Department Manager C, (all of) Davao City Water District, Bajada, Davao City,** *petitioners, vs.* **DANILO C. CASTRO and GEORGE F. INVENTOR,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; COMPLIANCE WITH THE CERTIFICATION REQUIREMENT IS SEPARATE FROM, AND INDEPENDENT OF, THE AVOIDANCE OF FORUM SHOPPING ITSELF, AS NON-COMPLIANCE WITH THE CERTIFICATION REQUIREMENT CONSTITUTES SUFFICIENT CAUSE FOR THE DISMISSAL WITHOUT PREJUDICE TO THE FILING OF THE COMPLAINT OR INITIATORY PLEADING UPON MOTION AND AFTER HEARING, WHILE THE VIOLATION OF THE PROHIBITION IS A GROUND FOR SUMMARY DISMISSAL THEREOF AND FOR DIRECT CONTEMPT.** — Generally, the rule on forum shopping applies only to judicial cases or proceedings, and not to administrative cases. Nonetheless, A.O. No. 07, as amended by A.O. No. 17, explicitly removed from the ambit of the rule the administrative cases filed before it when it required the inclusion of a Certificate of Non-Forum Shopping in complaints filed before it. x x x The respondents in this case attached a Certificate of Non-Forum Shopping to their separate Affidavit-Complaints, which amounts to an express admission on their part of the applicability of the rule in the administrative cases they filed against the petitioners. But compliance with the certification requirement is separate from, and independent of, the avoidance of forum shopping itself. Both constitute grounds for the dismissal

of the case, in that non-compliance with the certification requirement constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the violation of the prohibition is a ground for summary dismissal thereof and for direct contempt. The respondents' compliance, thus, does not exculpate them from violating the prohibition against forum shopping.

2. **ID.; ID.; ID.; THE RULE AGAINST FORUM SHOPPING PROHIBITS THE FILING OF MULTIPLE SUITS INVOLVING THE SAME PARTIES FOR THE SAME CAUSE OF ACTION, EITHER SIMULTANEOUSLY OR SUCCESSIVELY FOR THE PURPOSE OF OBTAINING A FAVORABLE JUDGMENT; MODE OR COMMISSION. —** The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping may be committed in three ways: (1) **through *litis pendentia*** — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) **splitting of causes of action** — filing multiple cases based on the same cause of action but with different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*. Common in these is the identity of causes of action. Cause of action has been defined as "the act or omission by which a party violates the right of another."

3. **ID.; ID.; ID.; ID.; FORUM SHOPPING THROUGH *LITIS PENDENTIA*; REQUISITES.—** [A] review of the Affidavit-Complaints separately filed by the respondents in **OMB-M-A-05-104-C** and **OMB-M-A-05-093-C** reveals the respondents' violation of the prohibition *via* the first mode, that is, through *litis pendentia*. The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

4. **ID.; ID.; ID.; THE CONSEQUENCES OF FORUM SHOPPING DEPEND ON WHETHER THE ACT WAS WILFUL AND DELIBERATE OR NOT; IF IT IS NOT WILFUL AND DELIBERATE, THE SUBSEQUENT CASES SHALL BE DISMISSED WITHOUT PREJUDICE; BUT IF IT IS WILFUL AND DELIBERATE, BOTH ACTIONS SHALL BE DISMISSED WITH PREJUDICE ON THE GROUND OF EITHER *LITIS PENDENTIA* OR *RES JUDICATA*.—** The finding of forum shopping does not, however, automatically render the two administrative cases dismissible. The consequences of forum shopping depend on whether the act was wilful and deliberate or not. If it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata*. In this case, the Court cannot grant the petitioners' prayer for the dismissal of the two administrative cases as there is no clear showing that the respondents' act of filing these was deliberate and wilful.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT INFRASTRUCTURE CONTRACT (PRESIDENTIAL DECREE NO. 1594); GOVERNMENT PROCUREMENT; NEGOTIATED CONTRACT WHEN MAY BE ENTERED INTO.—** P.D. No. 1594, and even the subsequent laws on procurement, set the order of priority in the procurement of government construction projects. First, by competitive public bidding and second, by negotiated procurement (or by administration or force account, as the case may be). Its Implementing Rules and Regulation (IRR), meanwhile, provide for the specific instances when a negotiated contract may be entered into, *viz.*: (1) in times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property; (2) when there is a failure to award the contract after competitive bidding for valid cause or causes, in which case bidding is undertaken through sealed canvass of at least three (3) contractors; and (3) in cases of adjacent or contiguous contracts. Even Executive Order (E.O.) No. 164, which the petitioners claim as the applicable law, provides for open public bidding as the norm, and negotiations/simplified bidding as the exception. This is because competitive public bidding protects the public interest

by giving the public the best possible advantages thru open competition, and avoids or precludes suspicion of favoritism and anomalies in the execution of public contracts.

6. **ID.; ID.; ID.; ID.; ID.; RESORT TO A NEGOTIATED PROCUREMENT/SIMPLIFIED BIDDING UNJUSTIFIED AS WATER SHORTAGE DOES NOT QUALIFY AS AN EMERGENCY ARISING FROM NATURAL CALAMITIES.—** [T]he petitioners justify their resort to a negotiated procurement/simplified bidding by claiming that "there was a public outcry for water in the areas of Buhangin, Cabantian, Lanang, Sasa and Panacan." Thus, they dispensed with the public bidding and instead, opted to send out invitations to "accredited well drillers." But as correctly concluded by both the Ombudsman and the CA, such "public outcry for water" does not qualify as an *emergency arising from natural calamities*, as required by both P.D. No. 1594 and E.O. No. 164. Natural calamities, as opposed to man-made calamities, usually refer to catastrophic events that result from the natural processes of the earth and which give rise to loss of lives or property or both. These include floods, earthquakes, storms and other similar natural events. Water shortage, clearly, does not belong to the list of natural calamities. In fact, the "public outcry for water" relied upon by the petitioners was brought about by insufficient water supply connections in the affected areas. Records also show that as early as May 1997, residents of the affected area have already been demanding for the improvement in their water supply system; yet, it was only in November 1997 that DCWD started to act on the matter and apparently, only after the clamour has been publicized in the local newspapers. This contradicts the petitioners' claim of urgency given the lapse of time that it took the DCWD to address the situation. The petitioners, clearly, had no justifiable reason to dispense with the public bidding of the VES 21 Project.

7. **ID.; ID.; ID.; ID.; ABSENT FAILURE OF A COMPETITIVE BIDDING, THE PRE-BIDDING AND AWARDS COMMITTEE (PBAC) CANNOT RESORT TO A NEGOTIATED PROCUREMENT.—** It is plain to see that what was undertaken at the very first instance was already a negotiated procurement of the VES 21 Project. As reported by Navales in his Audit Report dated March 26, 1998, there was no detailed engineering that was carried out for the project.

Such detailed engineering design is a preliminary requirement before any bidding or award may be made. The petitioners also admit that there was no posting of the invitation to bid, which is necessary in a competitive public bidding. Instead, they directly sent out letter-invitations to "[a]ccredited [w]ell [d]rillers as provided by Local Water Utilities Administration, and known and capable well drillers in the city" and it was from those who submitted their proposals that the PBAC-B eventually recommended Hydrock. These circumstances show that the procedure undertaken by the petitioners did not conform to the procedure provided in the IRR for competitive public bidding; hence, there was no failure of competitive bidding to speak of such that the PBAC-B may resort to a negotiated procurement.

8. **ID.; ID.; ID.; ID.; VIOLATION OF THE PROVISIONS OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF P.D. NO. 1594 WILL SUBJECT THE ERRING GOVERNMENT OFFICIAL/EMPLOYEE TO THE SANCTIONS PROVIDED UNDER THE "ANTI-GRAFT AND CORRUPT PRACTICES ACT" (R.A. NO. 3019), THE "CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES" (R.A. NO. 6713), AND THE CIVIL SERVICE LAW.—** [B]efore the petitioners can resort to a negotiated procurement through sealed canvass of at least three qualified contractors, whether under Section II, IB 10.6.2 of the IRR of P.D. No. 1594 or Section 5 of E.O. No. 164, there must first be a failure of a competitive public bidding undertaken in accordance with the IRR of P.D. No. 1594. In this regard, the Court has emphasized that "violation of the provisions of the IRR of [P.D. No.] 1594 will subject the erring government official/employee to the sanctions provided under existing laws particularly [R.A. No.] 3019 (known as the "Anti-Graft and Corrupt Practices Act") and [R.A. No.] 6713 (known as the "Code of Conduct and Ethical Standards for Public Officials and Employees"), and the Civil Service Law, among others." Consequently, the petitioners should be held administratively liable.

9. **ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; ADMINISTRATIVE CHARGES; MISCONDUCT, DEFINED; ELEMENTS OF GRAVE MISCONDUCT.—** Misconduct is defined as a transgression of some established and definite

rule of action, more particularly, unlawful behavior or gross negligence by a public officer. It becomes grave if it involves any of the additional elements of corruption, such as wilful intent to violate the law or to disregard established rules, which must be established by substantial evidence. "**Corruption**, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others." Moreover, like other grave offenses classified under the Civil Service laws, bad faith must attend the act complained of. **Bad faith** connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.

10. **ID.; ID.; ID.; ID.; ID.; TO BE DISCIPLINED FOR GRAVE MISCONDUCT OR ANY GRAVE OFFENSE, THERE MUST BE EVIDENCE, INDEPENDENT OF THE PETITIONERS' FAILURE TO COMPLY WITH THE RULES, WHICH WILL LEAD TO THE FOREGONE CONCLUSION THAT IT WAS DELIBERATE AND WAS DONE PRECISELY TO PROCURE SOME BENEFIT FOR THEMSELVES OR FOR ANOTHER.—** But to be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. There must be evidence, independent of the petitioners' failure to comply with the rules, which will lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person. In the present case, **there is no evidence on record that will convincingly establish that petitioners Yamson, Chavez, Navales and Guillen, who were the members of the PBAC-B, conspired or colluded with Carbonquillo and/or each other or with the invited well drillers, or that they schemed to rig the procurement process to favor Hydrock.** There is also no evidence showing that they benefited from the procurement of the project. Much less was there any evidence that petitioners Almonte and Laid, who were not even members of the PBAC-B, conspired with their co-petitioners and the other bidding participants in the procurement of the VES 21 Project.

11. **ID.; ID.; ID.; ID.; PETITIONERS CANNOT BE HELD LIABLE FOR GRAVE MISCONDUCT ABSENT ANY EVIDENCE ESTABLISHING CORRUPTION, BAD FAITH OR CONSPIRACY.—** What is unmistakeable here is that it was Carbonquillo who was predisposed to award the project to Hydrock *sans* the benefit of any bidding. This is clear from the tenor of his letter to DCWD's Board of Directors already recommending direct negotiation of the project to Hydrock. But to the credit of both the PBAC-B and the Board of Directors, Carbonquillo's recommendation was disregarded, and the PBAC-B proceeded to invite other accredited well drillers. And absent any evidence establishing corruption, bad faith or complicity with Carbonquillo, the petitioners cannot be held liable for grave misconduct or any other grave offense classified under the Civil Service Law.

12. **ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY, DEFINED; THE FAILURE OF THE MEMBERS OF PBAC TO STRICTLY COMPLY WITH THE PROCUREMENT PROCEDURE LAID DOWN IN P.D. NO. 1594 AND ITS IRR CONSTITUTES SIMPLE NEGLECT OF DUTY.—** At most, it is only petitioners Yamson, Chavez, Navales and Guillen, as members of the PBAC-B, who should be held individually accountable for their failure to strictly comply with the procurement procedure laid down in P.D. No. 1594 and its IRR, which constitutes Simple Neglect of Duty. As defined, Simple Neglect of Duty is the failure of an employee to give proper attention to a task expected of him, signifying disregard of a duty resulting from carelessness or indifference. In *Office of the Ombudsman v. Tongson*, the Court ruled that failure to use reasonable diligence in the performance of officially-designated duties has been characterized as Simple Neglect of Duty. x x x In this case, it has been established that there was no competitive bidding held in the first place and hence, there was no justification for the negotiated contract with Hydrock.

13. **ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT; THE FAILURE OF THE MEMBERS OF PBAC TO EXERCISE DILIGENCE IN THE PERFORMANCE OF THEIR OFFICIAL DUTIES CONSTITUTES SIMPLE MISCONDUCT, FOR IN THE DISCHARGE OF DUTIES, A PUBLIC OFFICER MUST USE PRUDENCE, CAUTION, AND ATTENTION WHICH CAREFUL PERSONS USE IN**

**THE MANAGEMENT OF THEIR AFFAIRS.—** As borne by the records, Carbonquillo instructed Yamson to inspect the project site on December 29, 1997. Yamson, in turn, instructed Chavez, who then instructed Almonte to conduct the inspection. At this point, the procurement for the VES 21 Project was still ongoing and yet to be awarded to Hydrock. As it turned out, the drilling was already ongoing at that time. But these facts, without more, are not sufficient to support the conclusion that the petitioners were in conspiracy with Carbonquillo, or as the respondents claimed, that the contract has already been pre-awarded to Hydrock. As the Court has ruled, for Grave Misconduct to attach, it must be shown that the acts of the petitioners were tainted with corruption, clear intent to violate the law, or flagrant disregard of an established rule, which must be proven by substantial evidence. Nevertheless, the petitioners cannot put the blame entirely on Carbonquillo. It behooved the petitioners to exercise diligence in the performance of their official duties. Had they been circumspect to begin with, it would not have been possible for Carbonquillo to commit these acts with impunity. The petitioners must be reminded that in the discharge of duties, a public officer must use prudence, caution, and attention which careful persons use in the management of their affairs. **Thus, petitioners Yamson and Chavez, together with Almonte, are individually liable for Simple Misconduct.**

14. **ID.; ID.; ID.; ID.; ID.; ECONOMIC VIABILITY AND THE DAVAO CITY WATER DISTRICT (DCWD) BOARD OF DIRECTORS' AND THE COMMISSION ON AUDIT'S ACCEPTANCE OF THE EXPLANATION REGARDING THE DELAYED DOCUMENTATION ARE NOT EXCULPATORY REASONS FOR NON-COMPLIANCE WITH P.D. NO. 1594 AND ITS IRR.—** With regard to the change order, it was also established that this was implemented for the VES 21 Project even before proper documentation was accomplished. x x x In *Office of the Ombudsman v. Agustino*, the Court held that a change order could only be performed by the contractor once it was confirmed and approved by the appropriate officials. Economic viability, and the DCWD's Board of Directors' and the Commission on Audit's acceptance of their explanation regarding the delayed documentation are not exculpatory reasons for non-compliance with P.D. No. 1594 and its IRR. **Navales, likewise, should**

**therefore be individually held accountable for Simple Misconduct**.

15. **ID.; ID.; ID.; ID.; FAILURE TO EXERCISE THE NECESSARY PRUDENCE TO ENSURE THAT THE COMPLETION OF THE GOVERNMENT PROJECT WAS ABOVE BOARD CONSTITUTES SIMPLE MISCONDUCT.** — The Court x x x cannot find any substantiation in the records of this case that will justify the conclusion that Laid had prior knowledge of the irregularities attending the VES 21 Project. All Laid did was certify that the VES 21 Project has been completed on February 24, 1998. There is nothing on record that will show Laid's direct and active participation during the planning, procurement and implementation of the VES 21 Project such that he should be aware of its surrounding circumstances. There is also no showing that his official duties as Assistant General Manager for Administration involved active participation in the project or that his act in certifying the date of completion was tainted with corruption, clear intent to violate the law, or flagrant disregard of an established rule. **If at all, Laid should be individually liable only for Simple Misconduct for his failure to exercise the necessary prudence to ensure that the completion of the VES 21 Project was above board.**

16. **ID.; ID.; ID.; ID.; PROPER PENALTY FOR SIMPLE NEGLECT OF DUTY AND SIMPLE MISCONDUCT.**— Under Section 52 (B) of Revised Uniform Rules in Administrative Cases in the Civil Service, Simple Neglect of Duty and Simple Misconduct are classified as less grave offenses, punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense. x x x There being no finding of conspiracy in this case, the petitioners' respective liabilities are individual in nature and the penalty to be imposed on them shall be as follows: (1) For petitioners **Yamson, Chavez** and **Navales** who are found guilty of Simple Neglect of Duty for their failure to strictly comply with P.D. No. 1594 and its IRR while they were members of the PBAC-B, the penalty of suspension to be imposed on them shall be in its maximum period, or six (6) months, as the offense was aggravated by the Simple Misconduct committed as a result of their lack of due diligence in ensuring the proper implementation of the

VES 21 Project; (2) For petitioner **Guillen**, who is found guilty only of Simple Neglect of Duty for his failure to strictly comply with P.D. No. 1594 and its IRR while he was a member of the PBAC-B, the penalty of suspension to be imposed shall be in its medium period, or three (3) months, there being no mitigating or aggravating circumstances present; and (3) For petitioners **Almonte** and **Laid**, who are found guilty of Simple Misconduct for their lack of due diligence in ensuring the proper implementation of the VES 21 Project, the penalty of suspension to be imposed shall likewise be in its medium period, or three (3) months, there being no mitigating or aggravating circumstances present.

17. **ID.; ID.; ID.; ID.; THE PREVENTIVE SUSPENSION OF THE EMPLOYEE WHILE THE ADMINISTRATIVE CASE IS ON APPEAL IS PUNITIVE IN NATURE AND THE PERIOD OF SUSPENSION BECOMES PART OF THE FINAL PENALTY OF SUSPENSION OR DISMISSAL.—** Records show, x x x that petitioners Navales, Chavez, Almonte and Laid were already removed from the employ of DCWD in 2008. Petitioner Yamson, meanwhile, retired on March 1, 2006, while petitioner Guillen resigned on July 3, 2006. In *Hon. Gloria v. CA*, the Court ruled that **the period when an employee was preventively suspended pending appeal shall be credited to form part of the penalty of suspension imposed**. An employee is considered to be on *preventive suspension pending appeal* while the administrative case is on appeal. Such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal. Consequently, the period within which petitioners Chavez, Navales, Almonte and Laid were preventively suspended pending appeal, *i.e.*, from 2008 until the promulgation of this Decision, shall be credited in their favor, and they may now be reinstated to their former positions having served more than eight years of preventive suspension. With regard to petitioners Yamson and Guillen, their separation from DCWD has rendered any modification as to the service of their respective penalties moot. Their permanent employment record, however, must reflect the modified penalty.

18. **ID.; ID.; ID.; ID.; BEFORE A GOVERNMENT EMPLOYEE MAY BE ENTITLED TO BACK SALARIES, HE MUST**

**BE FOUND INNOCENT OF THE CHARGES, AND HIS SUSPENSION MUST BE UNJUSTIFIED; CLARIFIED.—** Aside from reinstatement, one of the reliefs the petitioners prayed for was the award of full backwages. In *Civil Service Commission v. Cruz*, the Court already definitively settled the issue of a government employee's entitlement to backwages/back salaries. Thus, it was held that before a government employee may be entitled to back salaries, two conditions must be met, to wit: a) the employee must be found innocent of the charges, and b) his suspension must be unjustified. To be considered innocent of the charges, the Court explained that there must be complete exoneration of the charges levelled against the employee. According to the Court: [I]f the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal. Unjustified suspension, on the other hand, meant that the employee's separation from service is not warranted under the circumstances because there was no cause for suspension or dismissal, *e.g.*, where the employee did not commit the offense charged, punishable by suspension or dismissal (total exoneration); or the government employee is found guilty of another offense for an act different from that for which he was charged. These conditions were clearly not met in this case.

**APPEARANCES OF COUNSEL**

*Pizarras Gainza & Associates Law Office* for petitioners.
*Angelito P. Ramos, Jr.* for respondents.

## DECISION

**REYES, *J.*:**

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated December 6, 2010 rendered by the Court of Appeals (CA) in the consolidated cases docketed as CA-G.R. SP No. 105868 and CA-G.R. SP No. 105869. The assailed CA decision affirmed the Decisions of the Office of the Ombudsman of Mindanao (Ombudsman) in **OMB-M-A-05-104-C**[3] and **OMB-M-A-05-093-C**[4] dated October 26, 2007 and November 28, 2007, respectively, and provided for the following dispositive portion:

> **WHEREFORE**, the petitions for review are **DISMISSED**. The assailed *Decisions* dated October 26, 2007 and November 28, 2007 of the Office of the Ombudsman of Mindanao, in OMB-M-A-05-104-C and OMB-M-A-05-093-C, are **AFFIRMED**.
>
> **SO ORDERED**.[5]

### Facts of the Case

The petitioners and Danilo C. Castro and George F. Inventor (respondents) are all officials and employees of the Davao City Water District (DCWD). Engr. Wilfred G. Yamson (Yamson),[6] Engr. Rey C. Chavez (Chavez), Arnold D. Navales (Navales) and Atty. William V. Guillen (Guillen)[7] occupied

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[1] *Rollo*, pp. 10-74.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan concurring; *id.* at 79-109.

[3] Rendered by Graft Investigation and Prosecution Officer II Grace H. Morales; *id.* at 318-339.

[4] *Id.* at 291-316.

[5] *Id.* at 108.

[6] No longer in public service, having retired on March 1, 2006 based on the records of this case; *id.* at 80, 292.

[7] Petitioner Guillen is also no longer in public service, having resigned on July 3, 2006; *id.*

concurrent membership in its Pre-Bidding and Awards Committee-B (PBAC-B). Rosindo J. Almonte (Almonte), meanwhile, was the Division Manager of DCWD's Engineering and Construction Department, while Alfonso E. Laid (Laid) was the Assistant General Manager for Administration (collectively, the petitioners).

In Board Resolution No. 97-248[8] adopted on November 21, 1997, the DCWD Board of Directors approved the recommendation of DCWD General Manager Wilfredo A. Carbonquillo (Carbonquillo) to undertake the Cabantian Water Supply System Project stage by stage, with a budgetary cost of Thirty-Three Million Two Hundred Thousand Pesos (₱33,200,000.00). Initial activities for the project were the simultaneous drilling of two wells separately located in Cabantian (identified as VES 15 Project) and Communal (identified as VES 21 Project) in Davao City, both estimated at Four Million Pesos (₱4,000,000.00) each. Included in Carbonquillo's recommendation was the direct negotiation of the well drilling phase of the project to Hydrock Wells, Inc. (Hydrock).

On November 24, 1997, Hydrock President Roberto G. Puentespina (Puentespina) wrote Carbonquillo informing DCWD that his company is "willing to take the risk of undertaking the project to test the availability of water by drilling the pilot hole so that electric logging could be done."[9] Puentespina also wrote that they were willing to undertake the drilling even without the approval of DCWD as their crew and equipment were idle.[10]

Thereafter, in Resolution No. 05-97[11] approved on November 25, 1997, the PBAC-B resolved to dispense with the advertisement requirement in the conduct of the bidding and instead, opted to send letters to accredited well drillers and

[8] *Id.* at 129-131.

[9] *Id.* at 143.

[10] *Id.*

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

invited their participation in the VES 15 and VES 21 well drilling projects. Invited were Hydrock, AMG Drilling and Construction, Inc. (AMG) and Drill Mechanics, Incorporated (DMI).[12]

Only Hydrock and AMG responded favorably by submitting their respective quotations for the projects:

| Project | Hydrock | AMG |
|---|---|---|
| VES 15 | ₱2,807,100.00 | ₱3,080,000.00 |
| VES 21 | ₱2,349,180.00 | ₱2,596,900.00 |

AMG, however, requested that the project be implemented in July 1998 due to the unavailability of its equipment at the time of the invitation. DMI, for its part, sent its "regrets" as its drilling rigs are not available for immediate use.[13]

Thereafter, in Resolution No. 06-97[14] dated December 16, 1997, the PBAC-B resolved, "due to the urgency, importance and necessity of the well drilling project," to endorse the matter to the head of agency for approval, with a "recommendation that the project be pursued by a negotiated agreement contract with [HYDROCK] taking into account its track record, efficiency of performance, and quoted price."[15]

The PBAC-B's recommendation was well-taken by the DCWD Board of Directors, and in Resolution No. 98-27[16] dated February 13, 1998, it resolved to award to Hydrock the VES 15 Project at ₱2,807,100.00, and the VES 21 Project at ₱2,349,180.00. On the same date, February 13, 1998, Carbonquillo issued a notice of award to Hydrock, informing the latter that the contract for the VES 21 Project has been

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[12] *Id.* at 134-136.

[13] *Id.* at 138-139.

[14] *Id.*

[15] *Id.* at 139.

[16] *Id.* at 140-142.

awarded to it at the cost of ₱2,244,780.00.[17] Notice to proceed was then issued on February 20, 1998.[18]

After more than six years, or on January 12, 2005, the respondents filed a joint Affidavit-Complaint[19] with the Ombudsman, charging the petitioners[20] with Violation of Section 3 (e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, for the alleged non-observance of the proper bidding procedure in the VES 21 Project and for allegedly giving Hydrock unwarranted benefits, advantage or preference in the "surreptitious" grant of the contract to it. The case was docketed as OMB-M-C-05-0051-A.

Two weeks after, or on January 26, 2005, the respondents filed another joint Affidavit-Complaint[21] with the Ombudsman, likewise charging the petitioners with Violation of Section 3(e) of R.A. No. 3019, this time for the VES 15 Project, docketed as OMB-M-C-05-0054-A.

Less than two months later, the respondents filed two separate joint Affidavit-Complaints[22] with the Ombudsman, administratively charging the petitioners with Grave Misconduct, Grave Abuse of Authority, Dishonesty and Gross Negligence. The respondents adopted the allegations in the separate criminal complaints they filed with the Ombudsman against the petitioners in OMB-M-C-05-0051-A and OMB-M-C-05-0054-A as bases for the administrative charges. For the VES 21 Project, the administrative case against the petitioners was docketed as **OMB-M-A-05-093-C**, while the administrative case for the VES 15 Project was docketed as **OMB-M-A-05-104-C**.

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[17] *Id.* at 145.

[18] *Id.* at 148.

[19] *Id.* at 215-221.

[20] Also included as respondent in the affidavit-complaint was Carbonquillo, who earlier resigned from DCWD on February 11, 2000; *id.* at 292.

[21] *Id.* at 222-228.

[22] *Id.* at 229-229A, 230-231.

The pertinent allegations in the Affidavit-Complaint filed on January 12, 2005 in OMB-M-C-05-0051-A, are as follows:

14. That the awarding of the said contract is riddled with irregularities and anomalies from its inception up to the actual execution of the same;

15. That for one, the Resolution No. 05-97 of the [PBAC-B] x x x is a systemic violation of the P.D. No. 1594 as amended, x x x

x x x x x x x x x

16. That the act of the PBAC-B in passing Resolution No. 06-97 x x x is in flagrant violation of the requirement of P.D. 1594, IB-10.4.2, which requires that there must be two failure of bidding before negotiated contract may be entered into;

17. That the urgency, importance and necessity of the drilling, which was then cited by the PBAC-B as a reason in resorting to negotiated contract and in not observing the rules in case of failure of bidding as provided by P.D. 1594 were merely interposed by the members of the PBAC-B x x x to mislead the Board of the DCWD into approving the said project, because up to this date VES No. 15, which was simultaneously drilled with VES 21 remained to be unused;

18. That x x x, in fact the entire bidding process was just a mere farce to put a color of legitimacy to an otherwise illegal drilling of VES 21;

x x x x x x x x x

20. That as borne out by the Project Inspector's Daily Report dated December 29, 1997, x x x the [Hydrock] had actually started drilling VES 21 as early as December 29, 1997. x x x;

x x x x x x x x x

22. That undeniably, during the time (December 29, 1997) [Hydrock] started the drilling of VES 21, its contract was then still in the stage of negotiation. Parenthetically, we can conclude that the project has already been pre-awarded by the members of the PBAC-B, x x x;

23. That it is quite obvious that there exists a complicity among the members of the [PBAC-B] x x x;

x x x x x x x x x

25. That per Project Inspector's Daily Report, the drilling of VES 21 has already been completed on February 24, 1998. x x x;

26. That despite its completion on February 24, 1998, [Hydrock] submitted on March 10, 1998, a request for Change Order, requesting for the increase of the contract cost by Php 64,745.00, x x x;

27. The above mentioned request for change order was absurd, because how can the cost of VES #21 be changed when the same has already been completed;

x x x x x x x x x

30. That, however, despite of the knowledge of the Department Manager of the SIA, [Navales], of the anomalies surrounding the transactions concerning the drilling of VES 21, he even defended the same and prepared a report, which in effect affirms the said anomalies and much worse recommended for the approval of the said Change Order No. 1. x x x;

x x x x x x x x x

32. That to justify the said Change Order, the project was made to appear, through the conspiracy x x x, to have been completed on July 2, 1998, but the final billing was submitted only by the contractor [Hydrock] on October 1998;

33. That through the said final billings, it was made to appear that the drilling was still on progress on the dates between February 24 till July 2, 1998 and that certain percentage of the cost of contract is due to the contractor based on the accomplished work, when in truth and in fact the same had already been completed on February 24, 1998 x x x; the same is designed primarily to deceive the Board of Directors, the entire DCWD and the general public at large. x x x;

34. That [o]n January 27, 1999, a Certificate of Completion and Acceptance was issued supposedly by [Carbonquillo], but was signed by [Laid], who was then the Assistant General Manager for Administration, certifying to the effect that the Drilling of Production Well VES #21 has been physically completed on February 24, 1998 and that whatever withheld retentions be released. x x x;

35. That to a reasonable mind, the only conclusion that can be drawn in issuing the said Certificate of Completion x x x is that

[Laid] was aware that the drilling of VES 21 has already been completed as early as February 24, 1998[.][23]

Meanwhile, the Affidavit-Complaint filed on January 26, 2005 in OMB-M-C-05-0054-A contained essentially the same allegations as that filed in OMB-M-C-05-0051-A, albeit it referred to the VES 15 Project.[24]

The petitioners filed their Joint Counter-Affidavit[25] on April 15, 2005 to the administrative charges, adopting as defenses the contentions in their Joint Counter-Affidavit[26] dated February 22, 2005 in OMB-M-C-05-0051-A.[27] In the said Joint Counter-Affidavit, the petitioners denied the respondents' accusations and alleged, among others, that:

14.e The recourse of PBAC-B to adopt limited source bidding is allowed by law. The law applicable is Executive Order No. 164 x x x [.]

x x x x x x x x x

14.f It may help that we let this Honorable Office know that there was a public outcry for water in the areas of Buhangin, Cabantian, Lanang, Sasa and Panacan during the time PBAC-B deliberated on whether to proceed with the usual advertisement in a newspaper or adopt a simplified bidding. x x x.

x x x x x x x x x

16. x x x Thus, considering that the time was of essence in the prosecution of the project, and considering that only Hydrock can timely respond and meet the needs of DCWD at that moment, we, Yamson, Chavez, Navales, and Guillen x x x declared a failure of bidding as there was only one bidder that qualified and recommended for negotiated contract to Hydrock. PBAC-B could have awarded the project to Hydrock being the only responsive evaluated bidder

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[23] *Id.* at 216-219.

[24] *Id.* at 222-228.

[25] *Id.* at 246-248.

[26] *Id.* at 235-245.

[27] *Id.* at 247.

at the price the latter had offered. Yet, PBAC-B recommended a negotiated contract with Hydrock because it was more advantageous to DCWD as it could haggle more for a cheaper contract price through negotiation taking into account Section 5 (3) of Executive Order No. 164 x x x.

x x x x x x x x x

17. Thus, on December 16, 1997, PBAC-B passed Resolution No. 06-97, in which, it declared a failure of bidding and recommended for a negotiated contract with Hydrock. From December 16, 1997, our participation, x x x, as PBAC-B members in relation to the project (VES 21) officially ended, as it has in fact ended.

x x x x x x x x x

19.a I, [Yamson], do hereby declare that I was personally instructed by [Carbonquillo] x x x to send personnel to the project site on December 29, 1997 for inspection purposes. As I understood things up, [Carbonquillo] again made a verbal notice to proceed to Hydrock as what he did earlier in Production Wells Nos. 30, 31 and 32. I asked [Carbonquillo] whether the award of the project was already approved by the Board but I was cut-off and told to do things as instructed — no more questions asked as he took full responsibility of the project. Thus, in my capacity as Assistant General Manager for Operations, I instructed [Chavez], x x x, to send his men to the project site on December 29, 1997 per instruction of [Carbonquillo].

19.b I[,] [Chavez], was instructed by [Yamson] to send ECD personnel to the project site on December 29, 1997 per instruction of [Carbonquillo]. With what I went through with [Carbonquillo] when I tried to suspend the sealing of Production Well No. 30 (*please see subparagraphs 13.b and 13.b*), I just complied the marching order and instructed [Almonte] to do the things per construction.

19.c I, [Almonte], in compliance with the instruction of [Chavez], had in turn instructed Jose David Colindres to proceed to the project site on December 29, 1997. Being an employee of DCWD, I am bound to protect the interest of the DCWD. At that time, it was not within my power to suspend the prosecution of the drilling project. Thus, the most that I can do was to verify, check and evaluate the drilling procedure undertaken by Hydrock. x x x.

x x x x x x x x x

21. The implementation of the change order for VES 21 happened before its completion on February 24, 1998. In fact, I, [Navales], had been straightforward and transparent on this matter in my communication to the Board. x x x[.]

x x x x x x x x x

[21].e In fact, in a much earlier date, I, [Navales], has reported the matter to the Board and advised [Carbonquillo] to defer any payment thereon and secure first the approval of the Board. x x x.

x x x x x x x x x

23. With respect to the non-use of VES 15, the same is the result to the rotation of department managers of the DCWD following the dismissal of [Carbonquillo].

x x x x x x x x x[28]

The petitioners' allegations and defenses in OMB-M-C-05-0054-A are likewise similar to the foregoing allegations and defenses in OMB-M-A-05-104-C.[29]

**OMB-M-A-05-093-C (VES 21 Project)**

In its Decision[30] dated November 28, 2007, the Ombudsman found the petitioners administratively liable for grave misconduct and ordered their dismissal from service. The dispositive portion of the decision provides:

WHEREFORE, premises considered, this Office finds substantial evidence to hold [the petitioners] administratively liable for Grave Misconduct pursuant to Rule IV, Section 52, par. A(3) of the Civil Service Resolution No. 99-1936.

[Petitioners Laid, Chavez, Navales and Almonte] are hereby meted the penalty of DISMISSAL FROM SERVICE with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits

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[28] *Id.* at 239-244.

[29] *See* Position Paper, *rollo*, pp. 262-265.

[30] *Id.* at 291-317.

and perpetual disqualification for reemployment in the government service.

[Petitioners Yamson and Guillen], who are no longer in the public service, are hereby meted the applicable aforementioned accessory penalties.

With respect to [Carbonquillo], the instant case is rendered moot by the penalty of dismissal from service imposed on him in case no. OMB-MIN-ADM-98-090.

Accordingly, Engr. Rodora N. Gamboa, General Manager of the [DCWD], is hereby requested to immediately implement the penalty of dismissal from service pursuant to this Office's Memorandum Circular Order No. 01, Series of 2006, forthwith advising this Office of her compliance therewith.

SO DECIDED.[31]

The Ombudsman did not accept the petitioners' explanation as regards the PBAC-B's resort to a "simplified bidding," finding that the circumstances of the project do not call for the application of the exception to the general rule on competitive public bidding, *viz.*: (1) the "public outcry" was not a natural calamity; (2) there was no prior failure of competitive public bidding; (3) there was no adjacent or continuous project being undertaken by Hydrock; and (4) the VES 21 Project was not a take-over project. Thus, the Ombudsman found the petitioners guilty of Grave Misconduct, ruling that: (1) the petitioners failed to conduct the required public bidding; (2) the project was implemented by Hydrock ahead of the contract award, with the knowledge and approval of Carbonquillo, and with the cooperation of the petitioners; (3) the petitioners' justification that Carbonquillo was responsible for the mobilization of Hydrock prior to contract award is self-serving considering that the petitioners hold managerial positions and should not follow orders blindly; and (4) the change order was allowed even before proper documentation was accomplished, among others.[32]

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[31] *Id.* at 315-316.

[32] *Id.* at 311-314.

**OMB-M-A-05-104-C (VES 15 Project)**

The petitioners were likewise found guilty of grave misconduct by the Ombudsman for the VES 15 Project in its Decision[33] dated October 26, 2007. The dispositive portion of which provides:

> WHEREFORE, premises considered, this Office finds substantial evidence to hold [petitioners YAMSON, CHAVEZ, LAID, ALMONTE AND NAVALES] administratively liable for Grave Misconduct pursuant to Rule IV, Section 52, par. A(3) of the Civil Service Resolution No. 99-1936.
>
> [Petitioners CHAVEZ, LAID, ALMONTE and NAVALES] are hereby meted the penalty of DISMISSAL FROM SERVICE with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service.
>
> [Petitioner YAMSON], who is no longer in the government service, is hereby meted the applicable aforementioned accessory penalties.
>
> With respect to [CARBONQUILLO], the instant case is rendered moot by the penalty of dismissal from service imposed on him in case nos. OMB-MIN-98-275 and OMB-MIN-ADM-98-090.
>
> Accordingly, Engr. Rodora N. Gamboa, General Manager of the [DCWD], is hereby requested to immediately implement the penalty of dismissal from service pursuant to this Office's Memorandum Circular Order No. 01, Series of 2006, forthwith advising this Office of her compliance therewith.
>
> x x x x x x x x x
>
> SO DECIDED.[34]

The Ombudsman's findings and conclusion on the petitioners' accountability under the VES 15 Project are similar to its discussion regarding the petitioners' liability under the VES 21 Project. Thus, it ruled that the VES 15 Project did not fall under the exceptions to competitive bidding in Presidential

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[33] *Id.* at 318-340.

[34] *Id.* at 338-339.

Decree (P.D.) No. 1594,[35] and that the VES 15 Project was riddled with irregularities.[36]

**Ruling of the CA**

The petitioners' separate appeals to the CA were consolidated, and in the assailed Decision[37] dated December 6, 2010, the petitioners' dismissal from service was affirmed, *viz.*:

> **WHEREFORE**, the petitions for review are **DISMISSED**. The assailed *Decisions* dated October 26, 2007 and November 28, 2007 of the [Ombudsman] in OMB-M-A-05-104-C and OMB-M-A-05-093-C, are **AFFIRMED**.
>
> **SO ORDERED**.[38]

The CA rejected the petitioners' argument that the filing of the separate complaints filed against them in the Ombudsman constituted forum shopping. According to the CA, the rule on forum shopping applies exclusively to judicial cases/proceedings and not to administrative cases, and as such, the filing of the identical complaints with the Ombudsman does not violate the rule.[39]

The CA also found no reversible error in the Ombudsman's ruling that the petitioners are liable for grave misconduct, finding that they violated the mandatory provisions of P.D. No. 1594, particularly the absence of a public bidding on the award of the VES 15 and VES 21 Projects to Hydrock.[40] The CA ruled that the attendant circumstances do not justify dispensing with the public bidding and entering into a negotiated contract with Hydrock as the conditions set in P.D. No. 1594 were not met.

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[35] Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts. Issued on June 11, 1978.

[36] *Rollo*, pp. 334-337.

[37] *Id.* at 79-109.

[38] *Id.* at 108.

[39] *Id.* at 101.

[40] *Id.* at 102-107.

Thus, the petitioners are now before this Court, arguing that the CA Decision dated December 6, 2010 was not in accord with law or with the applicable decisions of the Court in that:

(i) the ruling in *Office of the Ombudsman v. Rodriguez*,[41] which states that forum shopping applies exclusively to judicial cases, pertains only to administrative cases filed prior to the effectivity of Administrative Order (A.O.) No. 17 amending A.O. No. 07 of the Ombudsman. Under Section 3, Rule III of A.O. No. 07, as amended by A.O. No. 17, dated September 7, 2003, an administrative complaint must be accompanied by a certificate of non-forum shopping duly subscribed and sworn to by the complainant or his counsel. It is clear, therefore, that the Ombudsman itself has made the proscription against forum shopping, and the penalties therefor, applicable to administrative cases filed with it; and

(ii) the petitioners did not violate the provisions of P.D. No. 1594 which they were dismissed for grave misconduct.[42]

The arguments raised by the petitioners are anchored on two (2) points — forum-shopping and lack of administrative liability based on the circumstances of the VES 15 and VES 21 Projects.

On the issue of forum shopping, the petitioners contend that the case of *Rodriguez*[43] cited by the CA is not applicable for the reasons that *Rodriguez* involved an Ombudsman and a Sangguniang Bayan case, and that the complaints in these cases were filed before the issuance of A.O. No. 07 (dated September 7, 2003) of the Ombudsman, which prescribed the filing of a certificate of non-forum shopping. The petitioners also insist that the respondents in this case violated the rule on forum

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[41] 639 Phil. 312 (2010).

[42] *Rollo*, pp. 26-27.

[43] *Supra* note 41.

shopping when they filed the administrative complaints separately, given that these arose from the same set of facts involving identical rights asserted and prayed for the same relief, and thus, entitling the dismissal of the cases. The petitioners also decry the splitting of the prosecution for the VES 15 and VES 21 Projects, arguing that the essence of the respondents' complaint is based actually on the same set of facts.

With regard to their culpability for the acts complained of, the petitioners argue that it was not the PBAC-B that approved the negotiation of the contract but the DCWD's Board of Directors, as evidenced by Board Resolution No. 97-248 dated November 21, 1997. What the PBAC-B merely did was recommend the negotiation of the contract to Hydrock and the ultimate decision to approve its recommendation was still with the Board of Directors. The petitioners attribute: (1) bad faith on the part of the CA when it allegedly failed to even mention the existence of Board Resolution No. 97-248; and (2) conspiracy on the part of the respondents and Ombudsman when they deliberately "hid" the contents of Board Resolution No. 97-248 to make it appear that it was the PBAC-B that unilaterally decided the award of the contract to Hydrock.

## Ruling of the Court

### *Forum shopping*

Generally, the rule on forum shopping applies only to judicial cases or proceedings, and not to administrative cases.[44] Nonetheless, A.O. No. 07, as amended by A.O. No. 17, explicitly removed from the ambit of the rule the administrative cases filed before it when it required the inclusion of a Certificate of Non-Forum Shopping in complaints filed before it. Thus, Section 3 of Rule III (Procedure in Administrative Cases) provides:

> Sec. 3. *How initiated*. — An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. **Such complaint shall be accompanied by a Certificate of Non-Forum Shopping**

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[44] *Laxina, Sr. v. Office of the Ombudsman*, 508 Phil. 527, 535 (2005).

**duly subscribed and sworn to by the complainant or his counsel**. An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman on his initiative or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance. (Emphasis ours)

The respondents in this case attached a Certificate of Non-Forum Shopping to their separate Affidavit-Complaints,[45] which amounts to an express admission on their part of the applicability of the rule in the administrative cases they filed against the petitioners. But compliance with the certification requirement is separate from, and independent of, the avoidance of forum shopping itself.[46] Both constitute grounds for the dismissal of the case, in that non-compliance with the certification requirement constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the violation of the prohibition is a ground for summary dismissal thereof and for direct contempt.[47] The respondents' compliance, thus, does not exculpate them from violating the prohibition against forum shopping.

The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment.[48] Forum shopping may be committed in three ways: (1) **through *litis pendentia*** — filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** — filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally

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[45] *Rollo*, pp. 229A and 231.

[46] *Juaban, et al. v. Espina, et al.*, 572 Phil. 357, 373 (2008), citing *Spouses Melo v. CA*, 376 Phil. 204, 213 (1999).

[47] *Office of the Ombudsman (Visayas) v. Court of Appeals, et al.*, 720 Phil. 466, 472 (2013), citing *Abbott Laboratories Phils., et al. v. Alcaraz,* 714 Phil. 510, 530 (2013).

[48] *Sps. Marasigan v. Chevron Philippines, Inc., et al.*, 681 Phil. 503, 515 (2012).

resolved; and 3) **splitting of causes of action** — filing multiple cases based on the same cause of action but with different prayers — the ground to dismiss being either *litis pendentia* or *res judicata*.[49] Common in these is the identity of causes of action. Cause of action has been defined as "the act or omission by which a party violates the right of another."[50]

In this case, a review of the Affidavit-Complaints separately filed by the respondents in **OMB-M-A-05-104-C** and **OMB-M-A-05-093-C** reveals the respondents' violation of the prohibition *via* the first mode, that is, through *litis pendentia*. The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[51]

The identity of parties in **OMB-M-A-05-104-C** and **OMB-M-A-05-093-C** is undeniable. Save for the inclusion of petitioner Guillen in **OMB-M-A-05-093-C**, the parties in these two cases are all the same, *viz.*: herein respondents as complainants, and petitioners Yamson, Laid, Chavez, Navales and Almonte as respondents, together with Carbonquillo. On this score, the non-inclusion of Guillen in **OMB-M-A-05-104-C** is inconsequential because the rule does not require absolute identity of parties; only substantial identity of parties is sufficient to qualify under the first requisite.[52]

There is also no denying the identity of rights asserted and relief prayed for in these cases.

The administrative complaint filed in **OMB-M-A-05-093-C** was based on the criminal complaint filed in OMB-M-C-05-

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[49] *Plaza v. Lustiva*, G.R. No. 172909, March 5, 2014, 718 SCRA 19, 32.

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

[51] *Id.* at 32.

[52] *Sps. Marasigan v. Chevron Philippines, Inc., et al., supra* note 48, at 516.

0051-A for the VES 21 Project. On the other hand, the administrative complaint filed in **OMB-M-A-05-104-C** was based on the criminal complaint filed in OMB-M-C-05-0054-A for the VES 15 Project. These two criminal complaints alleged exactly the same set of antecedent facts and circumstances. To illustrate[53] —

| **OMB-M-C-05-0054-A (VES 15 Project)** | **OMB-M-C-05-0051-A (VES 21 Project)** |
|---|---|
| 11. That by virtue of [Resolution No. 06-97] of the PBAC-B, the matter was endorsed by the general manager to the Board for approval and award, and as per Resolution No. 98-27 dated February 13, 1998, the Drilling of VES # 21 x x x was awarded to [Hydrock] x x x; | 13. That by virtue of [Resolution No. 06-97] of the PBAC-B, the matter was endorsed by the general manager to the Board for approval and award, and as per Board Resolution No. 98-27 dated February 13, 1998, the Drilling of VES # 15 x x x was awarded to [Hydrock] x x x; |
| 14. That the awarding of the said contract is riddled with irregularities and anomalies from its inception up to the actual execution of the same; | 17. That **similar to the awarding of VES #21**, which was the subject of a similar complaint that we filed before this Honorable Office on January 12, 2005, the awarding of the contract for the drilling of VES # 15 to [Hydrock], was also riddled with irregularities and anomalies from its inception up to the actual execution of the same; |
| 16. That the act of the PBAC-B in passing Resolution No. 06-97 x x x which is in flagrant violation of the requirement of P.D. 1594, IB-10.4.2 x x x; | 19. That the act of the PBAC-B in passing Resolution No. 06-97 x x x which is in flagrant violation of the requirement of P.D. 1594, IB-10.4.2 x x x; |
| 18. That the sheer disregard of the PBAC-B of P.D. 1594 in railroading the bidding of the | 21. That the sheer disregard of the PBAC-B of P.D. 1594 in railroading the bidding of the |

[53] *Rollo*, pp. 216-217, 223-225. (Emphasis ours)

| | |
|---|---|
| drilling project of **VES 15 and 21** is not the only malevolent act committed by the members of the said committee, in fact the entire bidding process was just a mere farce to put a color of legitimacy to an otherwise illegal drilling of VES 21[.] | drilling project of VES # 15 was nothing compared to the fact that the said bidding process was just a mere farce[.] |

More importantly, the rights asserted and relief prayed for in these administrative cases are also identical. The Affidavit-Complaints in the two administrative cases contained similar allegations, to wit:[54]

| **OMB-M-A-05-104-C (VES 15 Project)** | **OMB-M-A-05-093-C (VES 21 Project)** |
|---|---|
| 1. That We have caused the filing of the Case now pending x x x OMB-M-C-05-0054-A, for Violation of Section 3 (e)[,] R.A. 3019; | 1. That we have caused the filing of the Case now docketed x x x OMB-M-C-05-0051-A, for Violation of Section 3 (e)[,] R.A. 3019 |
| 2. That [since] no Administrative Case has as yet been filed concerning the said case, we hereby submit to this Honorable Office our intention to file Administrative Cases against the Respondents in the above-mentioned case; | 2. That since no Administrative Case has as yet been filed, we hereby submit to this Honorable Office our intention to file Administrative Cases against the Respondents in the above-mentioned case; |
| 3. That we are have attached [sic] herein our Affidavit-Complaint in the above-mentioned Criminal Case and forming part of this affidavit[.] | 3. That we are hereby attaching our Affidavit-Complaint in the above-mentioned Criminal Case and forming part of this affidavit[.] |

Moreover, both the complaints filed in these cases alleged a common cause of action, that is, the petitioners' alleged failure to conduct a public bidding on the drilling of two wells for the

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[54] *Id.* at 229, 230.

Cabantian Water Supply System Project, the alleged premature award of the contract to Hydrock and irregularities in the implementation of the projects. **The only distinction is the location of the drilling project**, with **OMB-M-A-05-093-C** involving the VES 21 Project located in Communal and **OMB-M-A-05-104-C** involving the VES 15 Project located in Cabantian. Notwithstanding the difference in location, it should be noted that there was only one procedure carried out by the PBAC-B in undertaking the negotiated procurement of the VES 15 and VES 21 Projects. Note, too, that the actions on these two projects were contained in the same resolutions — the PBAC-B's Resolution No. 05-97 approved on November 25, 1997 resolved to dispense with the advertisement requirement and opted to send letters to well drillers "for the proposed Well Drilling Projects in Communal and Cabantian";[55] the PBAC-B's Resolution No. 06-97 dated December 16, 1997 recommended the negotiated procurement of the VES 15 and VES 21 Projects to Hydrock;[56] and pursuant to the PBAC-B's recommendation, the DCWD Board of Directors issued Resolution No. 98-27 dated February 13, 1998, awarding the VES 15 and VES 21 Projects to Hydrock.[57] Clearly, the identity of these two cases is such that judgment in one administrative case would amount to *res judicata* in the other administrative case. As ruled by the Court in *Lagoc v. Malaga*,[58] "[w]hile the questioned transactions involved two (2) different projects, there was present only a singular wrongful intent to award the contracts x x x. Hence, the respondents concerned may be held liable for only one administrative infraction."[59]

The finding of forum shopping does not, however, automatically render the two administrative cases dismissible. The consequences of forum shopping depend on whether the

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

[56] *Id.* at 138-139.

[57] *Id.* at 140-142.

[58] G.R. No. 184785, July 9, 2014, 729 SCRA 421.

[59] *Id.* at 437.

act was wilful and deliberate or not. If it is not wilful and deliberate, the subsequent cases shall be dismissed without prejudice. But if it is wilful and deliberate, both (or all, if there are more than two) actions shall be dismissed with prejudice on the ground of either *litis pendentia* or *res judicata*.[60] In this case, the Court cannot grant the petitioners' prayer for the dismissal of the two administrative cases as there is no clear showing that the respondents' act of filing these was deliberate and wilful. Records show that these cases were premised on the two criminal complaints for Violation of Section 3(e) of R.A. No. 3019, which were separately filed <u>and</u> entertained by the Ombudsman. At the most, **OMB-M-A-05-104-C** (VES 15 Project), which was filed subsequent to **OMB-M-A-05-093-C** (VES 21 Project), should be, and is hereby, dismissed.[61]

In view of the dismissal of **OMB-M-A-05-104-C** (VES 15 Project), the Court will only resolve the petitioners' respective administrative liabilities in **OMB-M-A-05-093-C** (VES 21 Project).

***P.D. No. 1594 and the VES 21 Project***

The petitioners do not dispute the antecedent facts of this case. The query lies in the conclusion that is to be derived from these antecedent facts, that is, whether the petitioners are liable for grave misconduct.

P.D. No. 1594, and even the subsequent laws on procurement, set the order of priority in the procurement of government construction projects. First, by competitive public bidding and second, by negotiated procurement (or by administration or force account, as the case may be).[62] Its Implementing Rules

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[60] *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 663 (2014).

[61] See *Chua, et al. v. Metropolitan Bank & Trust Company, et al.,* 613 Phil. 143, 158-159 (2009).

[62] Section 4 of P.D. No. 1594 states that "[c]onstruction projects shall generally be undertaken by contract **after competitive public bidding**. Projects may be undertaken by administration or force account or by negotiated

and Regulation (IRR),[63] meanwhile, provide for the specific instances when a negotiated contract may be entered into, *viz.*: (1) in times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property; (2) when there is a failure to award the contract after competitive bidding for valid cause or causes, in which case bidding is undertaken through sealed canvass of at least three (3) contractors; and (3) in cases of adjacent or contiguous contracts.[64]

Even Executive Order (E.O.) No. 164,[65] which the petitioners claim as the applicable law, provides for open public bidding as the norm, and negotiations/simplified bidding as the exception.[66] This is because competitive public bidding protects

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contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provision of laws and acts on the matter, x x x. See also *D.M. Consunji, Inc. v. Commission on Audit*, 276 Phil. 595, 605 (1991).

[63] As amended on May 24 and July 5, 2000.

[64] IB 10.6.2 (1).

[65] Providing Additional Guidelines in the Processing and Approval of Contracts of the National Government. Issued on May 5, 1987.

[66] Sec. 5. *Public Bidding of Contracts; Exceptions*. — **As a general rule, contracts for infrastructure projects shall be awarded after open public bidding to bidders who submit the lowest responsive/evaluated bids**. x x x The Award of such contracts through negotiation shall not be allowed by the Secretary or Governing Board of the Corporation concerned within the limits as stated in Section 1 hereof in the following cases:

a. In times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property, in which case, direct negotiations or simplified bidding may be undertaken;

b. Failure to award the contract after competitive public bidding for valid cause or causes, in which case, simplified bidding may be undertaken;

c. Where the construction project covered by the contract is adjacent or contiguous to an ongoing projects and it could be economically prosecuted by the same contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices and contract conditions,

the public interest by giving the public the best possible advantages thru open competition, and avoids or precludes suspicion of favoritism and anomalies in the execution of public contracts.[67]

In this case, the petitioners justify their resort to a negotiated procurement/simplified bidding by claiming that "there was a public outcry for water in the areas of Buhangin, Cabantian, Lanang, Sasa and Panacan."[68] Thus, they dispensed with the public bidding and instead, opted to send out invitations to "accredited well drillers." But as correctly concluded by both the Ombudsman and the CA, such "public outcry for water" does not qualify as an *emergency arising from natural calamities*, as required by both P.D. No. 1594 and E.O. No. 164. Natural calamities, as opposed to man-made calamities, usually refer to catastrophic events that result from the natural processes of the earth and which give rise to loss of lives or property or both. These include floods, earthquakes, storms and other similar natural events.[69] Water shortage, clearly, does not belong to the list of natural calamities. In fact, the "public outcry for water" relied upon by the petitioners was brought about by insufficient water supply connections in the affected areas.[70] Records also show that as early as May 1997, residents of the affected area have already been demanding for the improvement in their water supply system;[71] yet, it was only in November 1997 that DCWD started to act on the matter[72] and apparently, only after the clamour has been publicized in the local

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less mobilization costs, provided, that he has no negative shippage and has demonstrated a satisfactory performance. Otherwise, the contract shall be awarded through public bidding.

[67] *Lagoc v. Malaga, supra* note 58, at 427.

[68] *Rollo*, p. 240.

[69] See CIVIL CODE OF THE PHILIPPINES, Article 1734.

[70] See *rollo*, pp. 127, 128.

[71] *Id.* at 115.

[72] *Id.* at 129-131.

newspapers.[73] This contradicts the petitioners' claim of urgency given the lapse of time that it took the DCWD to address the situation. The petitioners, clearly, had no justifiable reason to dispense with the public bidding of the VES 21 Project.

The petitioners also contend that failure of the first bidding justified resort to a simplified bidding, citing Section 5(b) of E.O. No. 164, which provides: "Failure to award the contract **after competitive public bidding** for valid cause or causes, in which case, simplified bidding may be undertaken."[74]

The applicable IRR of P.D. No. 1594[75] dictates the steps in carrying out a competitive public bidding — first, the execution and approval of a detailed engineering investigation, survey and design for the project;[76] second, in contracts costing ₱5,000,000.00 and below, the posting and advertisement of the Invitation to Bid at least two (2) times within two (2) weeks in a newspaper of general local circulation;[77] third, the pre-qualification/eligibility screening of prospective bidders in accordance with Section II, IB 4; fourth, after the prospective bidders have been screened and pre-qualified, the issuance of the plans, specifications, proposal book form/s for the contract to be bid by the Bid and Award Committee (BAC) to the eligible bidders;[78] fifth, the holding of a pre-bid conference in case the contract to be bid has an approved budget of ₱5,000,000.00 or more;[79] sixth, the submission, opening and abstracting of the bids;[80]

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[73] *Id.* at 127, 128.

[74] *Id.* at 239-241.

[75] Since the procurement of the VES 21 Project happened in 1997-1998, the applicable rule is the IRR of P.D. No. 1594 prior to its amendment in 2000.

[76] IRR, Section 1. See also A*lbay Accredited Constructors Association, Inc. v. Ombudsman Desierto,* 516 Phil. 308 (2006).

[77] Section II, IB 3. See also *Lagoc v. Malaga*, *supra* note 58.

[78] Section II, IB 7.

[79] *Id.* at IB 8.

[80] *Id.* at IB 10.2.

seventh, the evaluation of the bids;[81] and last, the award of the contract to the lowest bidder.[82]

The procedure for a negotiated procurement, on the other hand, is also set out in the IRR of P.D. No. 1594, *viz.*:

IB 10.6.2 – BY NEGOTIATED CONTRACT

1. Negotiated contract may be entered into only where any of the following conditions exists and the implementing office/agency/ corporation is not capable of undertaking the project by administration:

x x x x x x x x x

In cases a [in times of emergencies arising from natural calamities] and b [failure to award the contract after two (2) public biddings for valid cause or causes], **bidding may be undertaken through sealed canvass of at least three (3) qualified contractors**. x x x Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by heads of agencies within their limits of approving authority.

x x x x x x x x x
(Emphasis ours)

Records show that there was no competitive public bidding undertaken to begin with. The pertinent provisions of PBAC-B's Resolution No. 06-97 dated December 16, 1997 state:

WHEREAS, an urgent meeting was called by the PBAC-B to evaluate **the letter proposal[s]** of the well drillers, **who were invited to participate in the bidding** of the proposed well drilling project at Communal and Cabantian, [Davao] [C]ity.

x x x x x x x x x

With the foregoing, **a failure of competitive bidding is the result**. Meanwhile, the urgency of the project is of extreme importance. This Committee is in fact aware of the street demonstration, and public outcry of the residents in the affected area. The Committee therefore decided to indorse the matter to the Head of Office for his disposal

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[81] *Id.* at IB 10.4.

[82] *Id.* at IB 10.6.1.

with a recommendation that [HYDROCK] be given due consideration taking into account its track record, efficiency of performance, and quoted price.[83]

It is plain to see that what was undertaken at the very first instance was already a negotiated procurement of the VES 21 Project. As reported by Navales in his Audit Report dated March 26, 1998, there was no detailed engineering that was carried out for the project.[84] Such detailed engineering design is a preliminary requirement before any bidding or award may be made.[85] The petitioners also admit that there was no posting of the invitation to bid, which is necessary in a competitive public bidding.[86] Instead, they directly sent out letter-invitations to "[a]ccredited [w]ell [d]rillers as provided by Local Water Utilities Administration, and known and capable well drillers in the city"[87] and it was from those who submitted their proposals that the PBAC-B eventually recommended Hydrock. These circumstances show that the procedure undertaken by the petitioners did not conform to the procedure provided in the IRR for competitive public bidding; hence, there was no failure of competitive bidding to speak of such that the PBAC-B may resort to a negotiated procurement.

To restate, before the petitioners can resort to a negotiated procurement through sealed canvass of at least three qualified contractors, whether under Section II, IB 10.6.2 of the IRR of P.D. No. 1594 or Section 5 of E.O. No. 164, there must first be a failure of a competitive public bidding undertaken in accordance with the IRR of P.D. No. 1594. In this regard, the

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[83] *Id.* at 138-139.

[84] Resolution No. 05-97 stated: "That, in consideration with the Committee's experience as regards the poor participation of well drillers in bidding invitation for well drilling projects, **it was agreed that popular advertisement through newspaper be dispensed with** x x x." *Id.* at 132, 634-635.

[85] IRR, Section I.1.

[86] See *rollo*, p. 132.

[87] *Id.*

Court has emphasized that "violation of the provisions of the IRR of [P.D. No.] 1594 will subject the erring government official/employee to the sanctions provided under existing laws particularly [R.A. No.] 3019 (known as the "Anti-Graft and Corrupt Practices Act") and [R.A. No.] 6713 (known as the "Code of Conduct and Ethical Standards for Public Officials and Employees"), and the Civil Service Law, among others."[88] Consequently, the petitioners should be held administratively liable.

The remaining question now is the classification of the particular offense/s committed by the petitioners, and their respective participation and liabilities.

***(a) Petitioners Yamson, Chavez, Navales and Guillen's non-compliance with P.D. No. 1594***

As noted beforehand, the petitioners were held accountable by the Ombudsman and the CA based on the finding that they committed the offense in collusion or in conspiracy with each other and/or Carbonquillo. The CA affirmed the Ombudsman's finding that the petitioners are liable for grave misconduct, relying mainly on the Audit Report dated March 26, 1998 submitted by Navales stating the following findings and observations:

1. The detailed engineering which is a basic requirement prior to bidding/awarding of any project was not carried out. x x x.
2. There was no bidding conducted prior to the awarding of the projects. x x x.
3. The project was awarded to the contractor by way of negotiation by the General Manager himself, x x x.
4. The contractor started the project without an approved contract confirmed by the Board nor that there was an authority for the General Manager to sign the Contract. x x x.
5. The Board Resolution approving the project dated February 13, 1998 is just a week prior to the completion of the project — February 23, 1998. x x x.[89]

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[88] *Lagoc v. Malaga, supra* note 58, at 434.

[89] *Rollo*, pp. 634-635.

The Ombudsman, meanwhile, found that there was no competitive bidding conducted prior to the negotiated contract with Hydrock; the drilling for VES 21 Project was started by Hydrock even before they were informed by Carbonquillo to proceed; and the change order for the VES 21 Project was allowed even without proper documentation and came ahead of the awarding of the contract to Hydrock, among others.[90]

Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. It becomes grave if it involves any of the additional elements of corruption, such as wilful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[91] "**Corruption**, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others."[92] Moreover, like other grave offenses classified under the Civil Service laws, bad faith must attend the act complained of. **Bad faith** connotes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.[93]

But to be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge.[94] There must be evidence, independent of the petitioners' failure to comply with the rules, which will lead to the foregone conclusion that it was deliberate and was done precisely to procure some benefit for themselves or for another person.

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[90] *Id.* at 310-314.

[91] *Encinas v. PO1 Agustin, Jr., et al.*, 709 Phil. 236, 263 (2013), citing *Re: Complaint of Mrs. Salvador against Spouses Serafico*, 629 Phil. 192, 210 (2010).

[92] *Ampil v. Office of the Ombudsman, et al.*, 715 Phil. 733, 769 (2013).

[93] *Andrade v. CA*, 423 Phil. 30, 43 (2001).

[94] *Litonjua v. Justices Enriquez, Jr. and Abesamis*, 482 Phil. 73, 101 (2004).

In the present case, **there is no evidence on record that will convincingly establish that petitioners Yamson, Chavez, Navales and Guillen, who were the members of the PBAC-B, conspired or colluded with Carbonquillo and/or each other or with the invited well drillers, or that they schemed to rig the procurement process to favor Hydrock.** There is also no evidence showing that they benefited from the procurement of the project. Much less was there any evidence that petitioners Almonte and Laid, who were not even members of the PBAC-B, conspired with their co-petitioners and the other bidding participants in the procurement of the VES 21 Project. Collusion may be determined from the collective acts or omissions of the PBAC-B members and/or contractors before, during and after the bidding process, and the respondents, as complainants, have the burden to prove such collusion by clear and convincing evidence.[95] And while Hydrock eventually benefited from the VES 21 Project, having been awarded the contract, it should be stressed that Hydrock was not the only well driller invited by the PBAC-B to participate in the project. AMG and DMI were likewise invited by the PBAC-B, only that it was Hydrock's acceptable proposal and track record that clinched the award. And even then, the role of the PBAC-B was only to recommend the award of the project to Hydrock. It is DCWD, through its Board of Directors, that has the authority to approve,[96] and has in fact, ultimately decided to award the contract to Hydrock.[97]

What is unmistakeable here is that it was Carbonquillo who was predisposed to award the project to Hydrock *sans* the benefit of any bidding. This is clear from the tenor of his letter to

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[95] *Lagoc v. Malaga, supra* note 58.

[96] Under Section 17 of P.D. No. 198, all powers, privileges, and duties of local water districts are exercised and performed by and through its Board, although executive, administrative or ministerial power may be delegated and redelegated by the board to officers or agents designated for such purpose by the board. See also *Engr. Feliciano v. Commission on Audit*, 464 Phil. 439 (2004); *Davao City Water District v. Civil Service Commission*, 278 Phil. 605 (1991).

[97] *See* Resolution No. 98-27 dated February 13, 1998, *rollo*, pp. 140-142.

DCWD's Board of Directors already recommending direct negotiation of the project to Hydrock.[98] But to the credit of both the PBAC-B and the Board of Directors, Carbonquillo's recommendation was disregarded, and the PBAC-B proceeded to invite other accredited well drillers. And absent any evidence establishing corruption, bad faith or complicity with Carbonquillo, the petitioners cannot be held liable for grave misconduct or any other grave offense classified under the Civil Service Law. At most, it is only petitioners Yamson, Chavez, Navales and Guillen, as members of the PBAC-B, who should be held individually accountable for their failure to strictly comply with the procurement procedure laid down in P.D. No. 1594 and its IRR, which constitutes Simple Neglect of Duty.

As defined, Simple Neglect of Duty is the failure of an employee to give proper attention to a task expected of him, signifying disregard of a duty resulting from carelessness or indifference.[99] In *Office of the Ombudsman v. Tongson*,[100] the Court ruled that failure to use reasonable diligence in the performance of officially-designated duties has been characterized as Simple Neglect of Duty. According to the Court:

> **Respondents' failure to comply with P.D. No. 1594 cannot be trivialized and classified as a mere oversight. At the very least, it constitutes neglect of duty**. It must be stressed that respondents were mandated to comply with P.D. No. 1594 to insure that the terms and conditions of the contract are clear and unambiguous and, thus, prevent damage and injury to the government, and the consequent prejudice to the beneficiaries of project like the commuters and other road users. x x x.[101] (Emphasis ours)

In this case, it has been established that there was no competitive bidding held in the first place and hence, there was no justification for the negotiated contract with Hydrock.

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[98] *Id.* at 130.

[99] *Republic of the Philippines v. Canastillo*, 551 Phil. 987, 996 (2007).

[100] 531 Phil. 164 (2006).

[101] *Id.* at 185.

**Petitioners Yamson, Chavez, Navales** and **Guillen** were obliged to faithfully comply with the rules on competitive public bidding, as mandated by P.D. No. 1594, which states: "[e]ach office/agency/corporation shall have in its head office or in its implementing offices a [BAC] which shall be responsible for the conduct of *prequalification, bidding, evaluation of bids, and recommending award of contracts.*"[102] **Consequently, they should only be liable for Simple Neglect of Duty.**

***(b) Alleged irregularities committed by petitioners Yamson, Chavez, Almonte, Laid and Navales in the implementation of the VES 21 Project***

The CA and the Ombudsman also held the petitioners accountable for alleged irregularities in the implementation of the VES 21 Project, *i.e.*, premature implementation of the project and unauthorized change order. According to the Ombudsman, these irregularities were with the knowledge and approval of petitioners Yamson, Chavez and Almonte, and that Laid, despite knowledge of these irregularities, signed the Certificate of Completion without objection, effectively releasing Hydrock's retention money.[103]

Note should be made that these alleged infractions do not pertain anymore to petitioners Yamson and Chavez's functions as members of the PBAC-B; rather these already refer to their, including Almonte and Laid's, functions as employees and officials of the implementing agency itself, which in this case is DCWD. And as was previously established, it was Carbonquillo who was predisposed to award the VES 21 Project to Hydrock without the benefit of a public bidding. Records also show that Hydrock, in fact, commenced with the drilling of the pilot hole as early as December 1997, prior to the award of the contract, issuance of the notice of award and the notice to proceed in its

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[102] IRR, Section II, IB 2(1). *See* also *Executive Order No. 292 (Revised Administrative Code of 1987*), Book IV, Chapter 13, Section 64.

[103] *Rollo*, pp. 311-314.

favor.[104] The Court, however, cannot agree with the Ombudsman's conclusion that petitioners Yamson, Chavez and Almonte colluded with Carbonquillo in the premature implementation of the VES 21 Project.

As borne by the records, Carbonquillo instructed Yamson to inspect the project site on December 29, 1997. Yamson, in turn, instructed Chavez, who then instructed Almonte to conduct the inspection. At this point, the procurement for the VES 21 Project was still ongoing and yet to be awarded to Hydrock. As it turned out, the drilling was already ongoing at that time. But these facts, without more, are not sufficient to support the conclusion that the petitioners were in conspiracy with Carbonquillo, or as the respondents claimed, that the contract has already been pre-awarded to Hydrock. As the Court has ruled, for Grave Misconduct to attach, it must be shown that the acts of the petitioners were tainted with corruption, clear intent to violate the law, or flagrant disregard of an established rule, which must be proven by substantial evidence.[105]

Nevertheless, the petitioners cannot put the blame entirely on Carbonquillo. It behooved the petitioners to exercise diligence in the performance of their official duties. Had they been circumspect to begin with, it would not have been possible for Carbonquillo to commit these acts with impunity. The petitioners must be reminded that in the discharge of duties, a public officer must use prudence, caution, and attention which careful persons use in the management of their affairs.[106] **Thus, petitioners Yamson and Chavez, together with Almonte, are individually liable for Simple Misconduct.**

With regard to the change order, it was also established that this was implemented for the VES 21 Project even before proper documentation was accomplished. This was admitted by petitioner Navales when he stated that:

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[104] *Id.* at 141-142, 145, 148.

[105] *Miro v. Vda. de Erederos, et al.*, 721 Phil. 772, 796-797 (2013).

[106] *Seville v. Commission on Audit*, 699 Phil. 27, 32 (2012).

21. The implementation of the change of order for VES 21 happened before its completion on February 24, 1998. In fact, I, [Navales], had been straightforward and transparent on this matter in my communication to the Board. This was embodied in the Report dated August 20, 1998 x x x, quoted as follows:

x x x x x x x x x

8. The implementation of this change order occurred on January 30, 1998 and [was] completed on February 19, 1998, presented as Annex "G".

9. **Presentation of documents for the change order for Board approval was made only on June 22, 1998**, presented as Annex "H".[107] (Emphasis ours)

In *Office of the Ombudsman v. Agustino*,[108] the Court held that a change order could only be performed by the contractor once it was confirmed and approved by the appropriate officials. Economic viability, and the DCWD's Board of Directors' and the Commission on Audit's acceptance of their explanation regarding the delayed documentation[109] are not exculpatory reasons for non-compliance with P.D. No. 1594 and its IRR.[110] **Navales, likewise, should therefore be individually held accountable for Simple Misconduct**.

Finally, Laid was held liable for grave misconduct for affixing his signature on the Certificate of Completion despite his alleged knowledge of the irregularities attending the procurement and implementation of the VES 21 Project. The Ombudsman stated:

Having known of the completion of the physical works on 24 February 1998, [Laid] would have been aware of the irregularities attending the awarding of the VES 21 [P]roject contract to [Hydrock], its implementation and the issues attending the change order. Yet, [Laid] signed a Certificate of Completion without evident objection. This effectively released the withheld retention money to [Hydrock].[111]

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[107] *Rollo*, pp. 242-243.

[108] G.R. No. 204171, April 15, 2015, 755 SCRA 568.

[109] See *rollo*, p. 212.

[110] P.D. No. 1594, Section 9, and its IRR, Section III, CI 1.2.

[111] *Rollo*, p. 314.

The Court, however, cannot find any substantiation in the records of this case that will justify the conclusion that Laid had prior knowledge of the irregularities attending the VES 21 Project. All Laid did was certify that the VES 21 Project has been completed on February 24, 1998. There is nothing on record that will show Laid's direct and active participation during the planning, procurement and implementation of the VES 21 Project such that he should be aware of its surrounding circumstances. There is also no showing that his official duties as Assistant General Manager for Administration involved active participation in the project or that his act in certifying the date of completion was tainted with corruption, clear intent to violate the law, or flagrant disregard of an established rule. **If at all, Laid should be individually liable only for Simple Misconduct for his failure to exercise the necessary prudence to ensure that the completion of the VES 21 Project was above board.**[112]

***Imposable penalties and service thereof***

Under Section 52(B) of Revised Uniform Rules in Administrative Cases in the Civil Service,[113] Simple Neglect of Duty and Simple Misconduct are classified as less grave offenses, punishable by suspension of one (1) month and one (1) day suspension to six (6) months for the first offense; and dismissal from the service for the second offense. Section 54, meanwhile, provides the manner of imposition of the penalties, to wit:

> When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:
>
> a. The minimum of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
>
> **b. The medium of the penalty shall be imposed where no mitigating and aggravating circumstances are present.**

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[112] See *Seville v. COA, supra* note 106.

[113] Memorandum Circular No. 19, Series of 1999, Rule IV, Section 52 (B)(1) and (2).

c. **The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.**

d. Where aggravating and mitigating circumstances are present, paragraph (a) shall be applied where there are more mitigating circumstances present; paragraph (b) shall be applied when the circumstances equally offset each other; and paragraph (c) shall be applied when there are more aggravating circumstances. (Emphasis ours)

There being no finding of conspiracy in this case, the petitioners' respective liabilities are individual in nature and the penalty to be imposed on them shall be as follows:

(1) For petitioners **Yamson, Chavez** and **Navales** who are found guilty of Simple Neglect of Duty for their failure to strictly comply with P.D. No. 1594 and its IRR while they were members of the PBAC-B, the penalty of suspension to be imposed on them shall be in its maximum period, or six (6) months, as the offense was aggravated by the Simple Misconduct committed as a result of their lack of due diligence in ensuring the proper implementation of the VES 21 Project;

(2) For petitioner **Guillen**, who is found guilty only of Simple Neglect of Duty for his failure to strictly comply with P.D. No. 1594 and its IRR while he was a member of the PBAC-B, the penalty of suspension to be imposed shall be in its medium period, or three (3) months, there being no mitigating or aggravating circumstances present; and

(3) For petitioners **Almonte** and **Laid**, who are found guilty of Simple Misconduct for their lack of due diligence in ensuring the proper implementation of the VES 21 Project, the penalty of suspension to be imposed shall likewise be in its medium period, or three (3) months, there being no mitigating or aggravating circumstances present.

Records show, however, that petitioners Navales, Chavez, Almonte and Laid were already removed from the employ of DCWD in 2008.[114] Petitioner Yamson, meanwhile, retired

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[114] See *rollo*, pp. 460A-461, 463-464, 466-467, 469-470.

on March 1, 2006,[115] while petitioner Guillen resigned on July 3, 2006.[116]

In *Hon. Gloria v. CA,*[117] the Court ruled that **the period when an employee was preventively suspended pending appeal shall be credited to form part of the penalty of suspension imposed**.[118] An employee is considered to be on *preventive suspension pending appeal* while the administrative case is on appeal.[119] Such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal.[120] Consequently, the period within which petitioners Chavez, Navales, Almonte and Laid were preventively suspended pending appeal, *i.e.*, from 2008 until the promulgation of this Decision, shall be credited in their favor, and they may now be reinstated to their former positions having served more than eight years of preventive suspension. With regard to petitioners Yamson and Guillen, their separation from DCWD has rendered any modification as to the service of their respective penalties moot. [121] Their permanent employment record, however, must reflect the modified penalty.

***Award of backwages/back salaries***

Aside from reinstatement, one of the reliefs the petitioners prayed for was the award of full backwages. In *Civil Service*

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[115] *Id.* at 292.

[116] *Id.*

[117] 365 Phil. 744 (1999).

[118] *Id.* at 764.

[119] Section 47, Book V of the Administrative Code of 1987 provides, among others, that in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. *See* also Section 7, Rule III of the Rules of Procedure of the Ombudsman, as amended by A.O. No. 17 dated September 15, 2003. See also *Villasenor v. Ombudsman*, G.R. No. 202303, June 4, 2014, 725 SCRA 230, 238.

[120] *Hon. Gloria v. CA, supra* note 117, at 764.

[121] See *Light Rail Transit Authority v. Salvana*, 736 Phil. 123 (2014).

*Commission v. Cruz,*[122] the Court already definitively settled the issue of a government employee's entitlement to backwages/ back salaries. Thus, it was held that before a government employee may be entitled to back salaries, two conditions must be met, to wit: a) the employee must be found innocent of the charges, and b) his suspension must be unjustified. To be considered innocent of the charges, the Court explained that there must be complete exoneration of the charges levelled against the employee. According to the Court:

> [I]f the exoneration of the employee is relative (as distinguished from complete exoneration), an inquiry into the factual premise of the offense charged and of the offense committed must be made. If the administrative offense found to have been actually committed is of lesser gravity than the offense charged, the employee cannot be considered exonerated if the factual premise for the imposition of the lesser penalty remains the same. The employee found guilty of a lesser offense may only be entitled to back salaries when the offense actually committed does not carry the penalty of more than one month suspension or dismissal.[123] (Citation omitted)

Unjustified suspension, on the other hand, meant that the employee's separation from service is not warranted under the circumstances because there was no cause for suspension or dismissal, *e.g.*, where the employee did not commit the offense charged, punishable by suspension or dismissal (total exoneration); or the government employee is found guilty of another offense for an act different from that for which he was charged.[124]

These conditions were clearly not met in this case. For one, the petitioners were not completely exonerated of the charges against them. Indeed, they were found culpable of lesser offenses — Simple Neglect of Duty and Simple Misconduct; nevertheless, these emanated from the same acts that were the basis of the original charges against them — Grave Misconduct, Grave Abuse of Authority, Dishonesty and Gross Negligence — only that

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[122] 670 Phil. 368 (2011).

[123] *Id.* at 659.

[124] *Id.* at 661.

the Court does not find any element of corruption or bad faith. For another, Simple Neglect of Duty and Simple Misconduct carry with them the penalty of more than one month suspension.

In the same vein, their suspension (preventive suspension pending appeal) finds sufficient basis in this case. As earlier found, they were not completely exonerated of the charges against them and the lesser offense, which they were eventually found guilty of, merited a suspension of more than one month. Petitioners Chavez, Navales, Almonte and Laid, therefore, are not entitled to backwages.

**WHEREFORE,** the Decision dated December 6, 2010 of the Court of Appeals in CA-G.R. SP No. 105868 and CA-G.R. SP No. 105869 is hereby **MODIFIED** as follows:

(1) OMB-M-A-05-104-C is **DISMISSED** on ground of forum shopping;

(2) Petitioners Wilfred G. Yamson, Rey C. Chavez and Arnold D. Navales are found **GUILTY** of Simple Neglect of Duty, aggravated by Simple Misconduct and are imposed the penalty of six (6) months suspension;

(3) Petitioner William V. Guillen is found **GUILTY** of Simple Neglect of Duty and is imposed the penalty of three (3) months suspension;

(4) Petitioners Rosindo J. Almonte and Alfonso E. Laid are found **GUILTY** of Simple Misconduct and are imposed the penalty of three (3) months suspension;

(5) Petitioners Rey C. Chavez, Arnold D. Navales, Rosindo J. Almonte and Alfonso E. Laid are hereby ordered **REINSTATED** to their former or equivalent positions without loss of seniority rights, but without backwages/back salaries; and

(6) Let a copy of this Decision be reflected in the permanent employment records of petitioners Wilfred G. Yamson and William V. Guillen.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, Perez,* and *Jardeleza, JJ.,* concur.

**SECOND DIVISION**

[G.R. No. 200352. July 20, 2016]

**MARY JUNE CELIZ,** *petitioner, vs.* **CORD CHEMICALS, INC., LEONOR G. SANZ, and MARIAN ONTANGCO,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL BODIES LIKE THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), IF SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED RESPECT AND EVEN FINALITY BY THE COURT, MORE SO WHEN THEY COINCIDE WITH THOSE OF THE LABOR ARBITER, AND SUCH FACTUAL FINDINGS ARE GIVEN MORE WEIGHT WHEN THE SAME ARE AFFIRMED BY THE COURT OF APPEALS.—** In labor cases, issues of fact are for the labor tribunals and the CA to resolve, as this Court is not a trier of facts. In the present case, since the Labor Arbiter, the NLRC, and the CA are unanimous in their finding that petitioner was not illegally dismissed, this Court must abide by such conclusion. "Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the Labor Arbiter. Such factual findings are given more weight when the same are affirmed by the Court of Appeals."

2. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; LOSS OF TRUST AND CONFIDENCE; IN CASES OF DISMISSAL FOR BREACH OF TRUST AND CONFIDENCE, PROOF BEYOND REASONABLE DOUBT OF AN EMPLOYEE'S MISCONDUCT IS NOT REQUIRED, FOR IT IS SUFFICIENT THAT THE EMPLOYER HAD REASONABLE GROUND TO BELIEVE THAT THE EMPLOYEE IS RESPONSIBLE FOR THE MISCONDUCT WHICH RENDERS HIM UNWORTHY OF THE TRUST AND CONFIDENCE DEMANDED BY HIS POSITION.—**

[W]e reiterate the rule that in cases of dismissal for breach of trust and confidence, proof beyond reasonable doubt of an employee's misconduct is not required. It is sufficient that the employer had reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position. In the case at bench, it cannot be doubted that petitioner succeeded in discharging its burden of proof. [W]e reviewed the records of the case and found that, contrary to petitioner's contention, there was substantial evidence showing that the subject cash advances were properly attributed to petitioner and that she failed to liquidate the same. In short, there was just cause to dismiss her from the service.

3. **ID.; ID.; ID.; ID.; PROCEDURAL DUE PROCESS REQUIREMENTS; COMPLIED WITH.—** It is also beyond cavil that respondents observed the requirements of procedural due process. In the first notice to explain, petitioner was properly informed of the charge against her, *i.e.*, failure to liquidate the cash advances. In addition, respondents allowed petitioner access to company records in order for the latter to thoroughly prepare her explanation and defense. Considering the circumstances, respondents even generously granted petitioner more time to sift through the company records. However, petitioner was only able to liquidate a small portion of the cash advances; she failed to explain how and where she spent the rest. Consequently, respondents have no other recourse but to dismiss petitioner for loss of trust and confidence. It is on record that respondents notified petitioner of her termination from service.

4. **ID.; ID.; ID.; ID.; AN EMPLOYEE DISMISSED FOR VIOLATION OF THE TRUST AND CONFIDENCE REPOSED ON HER IS NOT ENTITLED TO ANY MONETARY BENEFITS.—** [N]o ill motive or bad faith may be attributed to respondents. It is on record that respondents even acceded to petitioner's request for a graceful exit. However, the discovery of anomalies connected with her office simply took away her privilege of receiving monetary benefits at such exit, which, despite the unfortunate circumstances, Leonor was graciously willing to grant. For violating the trust and confidence reposed in her, petitioner is not entitled to any benefit in leaving Cord, Inc.

### APPEARANCES OF COUNSEL

*De La Rosa & Nograles* for petitioner.
*Tolosa Romulo Agabin Flores & Enriquez Law Office* for respondents.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

This Petition for Review on *Certioran*[1] assails the October 26, 2011 Decision[2] of the Court of Appeals (CA) which dismissed the Petition for *Certiorari*[3] in CA-G.R. SP No. 116098, and its subsequent January 18, 2012 Resolution[4] denying herein petitioner's Motion for Reconsideration.[5]

***Factual Antecedents***

As found by the CA, the facts of the case are as follows:

> Private respondent Cord Chemicals, Inc. (Cord, Inc.) is a domestic company owned and managed by private respondent Leonor Sanz (Leonor), its Chief Executive Officer. It was formerly operated by Francisco Sanz (Francisco), husband of Leonor, who met his demise in 2008.
>
> Celiz started her employment with Cord, Inc. way back in 1992 when she was hired as an Assistant Accounting Manager. She steadily climbed the ranks until her promotion as Chief of Sales, the second highest ranking position, concurrent with her position as Senior Operations Manager. During her stint, Celiz claimed that the sales profit of Cord, Inc. tremendously increased.

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[1] *Rollo,* pp. 10-56.

[2] *Id*. at 60-69; penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Stephen C. Cruz and Ramon A. Cruz.

[3] *Id*. at 577-616.

[4] *Id*. at 57-58.

[5] *Id*. at 689-700.

Celiz averred that upon the death of Francisco, the new management advised her not to report for work anymore. She was then invited by Leonor and her children to a meeting at a restaurant in Makati City where the Sanz family came with two lawyers in tow. She was supposedly informed that Leonor was jealous of her intimate relationship with Francisco. Reeling in protest, Celiz insisted that her relationship with Francisco was purely professional. Knowing that fighting Leonor was pointless as she was well connected, Celiz then asked that she be allowed to resign. Leonor acceded and told her to claim her separation pay by the end of October 2008.

Celiz did return to Cord, Inc. to tender her resignation. To her utter disbelief, however, she was informed by the company counsel that she will be dismissed from work because of her failure to account for numerous unliquidated advances amounting to ₱713,471.00.

Thereafter, Cord, Inc. served upon Celiz the *Notice to Explain* informing her that being a managerial employee, she was vested with a high degree of trust and confidence and that her failure to liquidate accounts was tantamount to dishonest handling of company funds. Cord, Inc. was impelled to place her on preventive suspension. She was also asked to submit her formal explanation, and to attend the investigation that would be conducted so she could explain her side of the matter.

Celiz replied that she could not answer the accusations hurled against her because of time constraint, and she did not have access to her office files. She requested that she be given seven working days to check her documents, vouchers and cash advances so she could properly respond to the charges leveled against her.

Cord, Inc. granted her three consecutive days to go over all her records in the presence of two other employees. It reminded her to submit her explanation on the unliquidated cash advances. She, however, objected that Cord, Inc. still refused her entry to her room, and instead told her to stay at the Conference Room where she was given 12 boxes allegedly containing all documents from her office.

In her *Letter,* Celiz deplored that she was indiscriminately placed under preventive suspension which was announced at Cord, Inc.'s General Assembly. She maintained that she did not deserve such punishment given her sterling and devoted service to the company for 17 years. On the unliquidated accounts, she claimed that several entries in the ledger were credited in her name, albeit these were given to the employees. She could not explain the expenses [reflected]

on the company credit card issued to her as she was not furnished with the Statement of Account. She again repeated her request for a certified copy of the details of her supposed unliquidated cash advances.

On 6 December 2008, Cord, Inc. dismissed Celiz for serious breach of trust and confidence. Left with no other recourse, she sued Cord, Inc. for *Illegal Dismissal and Monetary Benefits* before the Labor Arbiter. As Chief Executive Officer, Leonor, and Marian Ontanco[6] (Marian), the Human Resources Manager were impleaded therein.

Cord, Inc., Leonor and Marian, for their part, denied the charge of illegal dismissal. They revealed that Celiz was the paramour of Francisco and that Leonor and her children were well aware of the illicit relations, but could not do anything about it. To bolster such averment, they submitted, *inter alia,* the handwritten letters of Celiz to Francisco declaring her love, admiration and gratitude to the latter.

As it happened, Leonor took over the reins of Cord, Inc. upon Francisco's untimely demise. Since she knew that Celiz was her husband's mistress, Leonor informed the latter not to report for work in the meantime, for she was still considering her options. Celiz was assured that she would still be in the payroll during her absence. Celiz then communicated her desire to be given a graceful exit from Cord, Inc., which prodded Leonor to arrange a meeting with her at a restaurant in Makati City.

It was during that meeting when Celiz informed Leonor, her children, as well as Cord, Inc.'s lawyers that she will be resigning at the end of October 2008 and transferring to a company engaged in the same industry as that of Cord, Inc. Leonor agreed to give Celiz her separation pay and reminded her that the confidentiality clause in her employment contract was still in force.

On 14 October 2008, Celiz went to her office and cleaned out her desk. She received her salary for the half month of October. In the meantime, Cord, Inc. informed its Accounting personnel of the impending resignation of Celiz so that standard clearance procedure on Celiz's ledgers may be undertaken. It was the standing policy of the company not to release the last salary and benefits of a resigning employee pending the clearance of her accounts.

It was during the audit that Cord, Inc. discovered the unliquidated cash advances of Celiz in the staggering amount of ₱713,471.00.

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[6] Or Ontangco.

The Accounting personnel reported that (a) by her conduct, Celiz gave everyone the impression that her *"closeness"* to Francisco rendered her exempt from compliance with the requirement to liquidate, (b) she simply shouted at them each time they reminded her to liquidate, and (c) on those instances when they could safely bring up the matter of liquidation because Celiz was in a good mood, she would just say *"nasa akin yan, hindi ko pa lang naaayos."*

Cord, Inc. proceeded to inform Celiz of her unliquidated cash advances, yet she refused to square up this matter. This impelled Cord, Inc. to send the first *Notice* giving her 48 hours within which to explain her side of the matter. She was likewise placed on preventive suspension considering the gravity of the charges against her.

When Celiz requested for more time to scrutinize her files, Cord, Inc. acquiesced in giving her ample time to do so. Meanwhile, Leonor conducted her own investigation and unraveled that Celiz had been padding and adjusting her sales output, and reporting fictitious sale: to magnify the sales figure for the whole year. She had not been attending to customer complaints which exposed Cord, Inc. to potential lawsuits. These shortcomings remained unacted upon because of her special relationship with Francisco.

Celiz finally liquidated her advances but her accounting fell short of ₱445,272.93. For misappropriating company funds, Cord, Inc. dismissed Celiz as she was found unworthy of the trust and confidence reposed upon her.

Weighing the discordant postures of the parties, the Labor Arbiter rendered the 29 June 2009 *Decision* holding that the severance of employment was for a just cause and after observance of due process. The *Complaint* of Celiz was accordingly dismissed for lack of merit.

Undeterred, Celiz sought recourse before the NLRC which paid no heed to her *Appeal* and affirmed the Labor Arbiter's judgment in the assailed *Decision.* The NLRC stood pat with its conclusion and denied the *Motion for Reconsideration* in the challenged *Resolution*.[7]

***Ruling of the Court of Appeals***

In a Petition for *Certiorari* filed with the CA and docketed as CA-G.R. SP No. 116098, petitioner sought to reverse the

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[7] *Rollo,* pp. 61-65. Citations omitted.

above May 13, 2010 Decision[8] and June 29, 2010 Resolution[9] of the National Labor Relations Commission (NLRC), and be awarded her claim of backwages arid other benefits, damages, and attorney's fees, with reinstatement, on account of her illegal dismissal. She claimed that the NLRC committed grave abuse of discretion in affirming the Labor Arbiter; that it was error for the NLRC to validate her dismissal for failing to account for the ₱445,272.93 unliquidated cash advances, since she was not accountable therefor, and there was no proof to show that she received and benefited therefrom; that the dismissal of the complaint for qualified theft filed by respondents against her before the Office of the City Prosecutor of Mandaluyong City[10] relative to the cash advances in issue conclusively proves her innocence of the administrative charges filed against her; that there is no basis to dismiss her on the ground of loss of trust and confidence, since the alleged loss of trust was simulated; that the true reason for her dismissal was respondent Leonor's extreme jealousy and claim that petitioner was Francisco's mistress, grounds which are not sanctioned under the Labor Code; that her dismissal was not attended by due process, as she was not given ample opportunity to defend herself from the charges against her since no hearing was conducted; and that for her illegal dismissal, she is entitled to her monetary claims.

On October 26, 2011, the CA issued the assailed Decision containing the following pronouncement:

*The Petition fails to impress.*

Cord, Inc., Leonor and Marian (now, private respondents) adduced clear and compelling proof bolstering petitioner's just and lawful dismissal.

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[8] *Id*. at 546-555; Decision in NLRC LAC No. 09-002585-09; penned by Commissioner Nieves E. Vivar-de Castro and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Isabel G. Panganiban-Ortiguerra.

[9] *Id*. at 575-576.

[10] *Id*. at 469-473; Resolution dated May 15, 2009 penned by 2nd Assistant [City] Prosecutor Leilani M. Rodriguez in NPS Docket No. XV-00-INV-09A-00014.

It bears accent that the termination of petitioner's employment was anchored on her failure to explain and account for unliquidated advances amounting to ₱445,272.93. As the employee directly in charge with the use of these funds, petitioner should have been more circumspect in handling them knowing fully well that her position demands a high degree of trust.

Indeed, petitioner committed serious breach of the trust and confidence reposed in her by her employer warranting the just severance of her employment. The law protecting the rights of the laborer authorizes neither oppression nor self-destruction of the employer.

In *Philippine Military Veterans Security and Investigation Agency v. Court of Appeals*, it was decisively held that —

> "Loss of trust and confidence as a ground for dismissal does not entail proof beyond reasonable doubt of the employee's misconduct. However, the evidence must be substantial and must establish clearly and convincingly the facts on which the loss of confidence in the employee rests. To be a valid reason for dismissal, loss of confidence, must be genuine, x x x"

As Chief of Sales and Senior Operations Manager, petitioner occupied the second highest ranking position in the company. The routine audit conducted as clearance procedure prior to the release of her separation pay unearthed how she wasted the coffers of the company. In this light, We cannot compel private respondents to retain her services. She was shown to be a gross liability to the company. Neither could We blame private respondents for losing confidence in petitioner. Her misconduct unmasked her untruthfulness, and constituted infidelity of her employer's trust.

Appositely, We reverberate the disquisition of the Labor Arbiter —

> "That (petitioner) held a position of trust and confidence is very evident from the nature of her position as the Chief of Sales & Senior Operations Manager of the respondent company. The fact that she was found wanting in the discharge of her duties and functions as such have been proven from the documentary and testimonial evidence proving that (petitioner) failed to account for sums that were either credited to her or were subject to her custody. Hence, it cannot be said that the basis for finding (petitioner) guilty of breach of trust, was simulated or fabricated, considering that the charge was anchored

> on the itemized advances documents which respondents even provided the (petitioner) at the time the show cause notice was served.
>
> It is also noteworthy that it was only after she had been duly charged that the (petitioner) was able to liquidate some of the cash advances, and failed to account for the balance, thus lending credence to respondents' contention that the (petitioner) had been remiss in her duties as second highest ranking officer of the company."

Withal, We ingeminate the labor tribunals' disposition that petitioner was afforded procedural due process before the termination of her employment was effected.

Basic is the principle that the employer must furnish the employee with two written notices before termination of employment can be legally effected: (a) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought, and (b) the subsequent notice which informs the employee of the employer's decision to dismiss him.

The records divulge that petitioner was furnished with the first *Notice to Explain* informing her of her failure to liquidate numerous advances, which was tantamount to dishonest handling of funds, She was duly asked to tender her written explanation and to attend the formal investigation to sift through the grievances against her, When petitioner asked for more time to submit her explanation, she was given another 48 hours within which to comply. Petitioner was likewise accorded access to company files and records to allow her to thoroughly prepare her defense. Miserably, petitioner was only able to account for a portion of the unliquidated advances attributed against her prompting private respondents to send the subsequent notice informing her of the decision to dismiss her from service. To Our mind, private respondents observed due process before terminating petitioner's employment.

All things judiciously considered, We discern no grave abuse of discretion committed by the labor tribunals in ruling that petitioner was dismissed for cause and after compliance with procedural due process. We have always condemned in the strongest possible terms an employee's dishonest act when proven by clear and convincing evidence.

WHEREFORE, the *Petition for Certiorari* is hereby DISMISSED.

SO ORDERED.[11]

Petitioner filed her Motion for Reconsideration, which was denied by the CA in a January 18, 2012 Resolution. Thus, the instant Petition was instituted.

## Issues

Petitioner claims that:

I

THE RULING OF THE COURT OF APPEALS THAT PETITIONER COMMITTED SERIOUS BREACH OF TRUST AND CONFIDENCE WHICH WARRANTED HER TERMINATION FROM EMPLOYMENT IS PATENTLY CONTRARY TO THE PRONOUNCEMENT OF THIS HONORABLE COURT IN *LIMA LAND, INC. VS. CUEVAS* [G.R. NO. 169523, 16 JUNE 2010] ON THE DOCTRINE OF LOSS OF TRUST AND CONFIDENCE, PARTICULARLY, THE REQUIREMENT THAT THE BREACH OF TRUST BE ESTABLISHED BY SUBSTANTIAL EVIDENCE.

II

THE COURT OF APPEALS FAILED TO ADHERE TO THE PRONOUNCEMENT OF THIS HONORABLE COURT IN THE CASES OF *KING OF KINGS TRANSPORT VS. MAMAC* [G.R. NO. 166208, 29 JUNE 2007] AND *PEREZ VS. PHILIPPINE TELEGRAPH & TELEPHONE COMPANY* [G.R. NO. 152048, 7 APRIL 2009] WHEN IT HELD THAT THERE WAS COMPLIANCE WITH THE REQUIREMENTS OF PROCEDURAL DUE PROCESS OF LAW PRIOR TO THE TERMINATION OF PETITIONER FROM EMPLOYMENT.[12]

***Petitioner's Arguments***

Praying that the assailed CA dispositions be set aside and that respondents be declared guilty of illegal dismissal and adjudged liable for monetary claims, damages, and attorney's

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[11] *Id*. at 65-68. Citations omitted.

[12] *Id*. at 32.

fees as prayed for in the Petition, petitioner maintains therein and in her Reply[13] that her termination on the ground of loss of trust and confidence, which the CA sanctioned, was not supported by substantial evidence, in that it has not been shown that she actually received the amount of ₱445,272.93 out of the ₱713,471.00 unliquidated cash advances attributed to her, or that they were legitimate expenses backed by the necessary supporting documents; that in view of lack of evidence showing that she received said amount, she is not duty bound to account therefor; that in *Lima Land, Inc. v. Cuevas,*[14] it was held that loss of trust and confidence as a ground for dismissal must be genuine, not simulated and a mere afterthought intended to justify an earlier action taken in bad faith by management, that there must be an actual breach of duty committed by the employee which must be established by substantial evidence; that the charges against her were fabricated to exact revenge for Leonor's unfounded and unproved claim that petitioner was Francisco's mistress; that the dismissal of the complaint for qualified theft filed against her before the City Prosecutor of Mandaluyong proves her innocence; and that contrary to the findings of the CA, she was deprived of her right to due process and was not given ample opportunity to defend herself, as she was denied access to pertinent documents that were needed for the formulation of her defense and was not accorded a formal hearing.[15]

***Respondents' Arguments***

In their joint Comment[16] which prays for dismissal of the Petition, respondents maintain that petitioner raises issues of fact which are beyond the purview of a petition for review on *certiorari;* that the identical findings of fact and law of the

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[13] *Id.* at 650-661.

[14] 635 Phil. 36 (2010).

[15] Citing *King of Kings Transport v. Mamac,* 553 Phil. 108 (2007); and *Perez v. Philippine Telegraph and Telephone Company,* 602 Phil. 522 (2009).

[16] *Rollo,* pp. 702-714.

CA, the NLRC, and the Labor Arbiter are final and conclusive; that the pieces of documentary evidence, consisting of the sworn statement of Cord, Inc.'s Chief Accountant Gloria Razon, and entries in petitioner's Cash Advance Subsidiary Ledger which were recorded in the ordinary course of business, clearly indicate that petitioner failed to liquidate all of her cash advances; that petitioner herself admitted the authenticity of the Cash Advance Subsidiary Ledger when she contended in her Position Paper[17] before the Labor Arbiter that she was able to liquidate "most of the expenses mentioned" therein; that apart from the evidence relating to petitioner's unliquidated cash advances, it has been proved, through the love letters she sent to Francisco, and the sworn statements of Francisco's Executive Secretary, Aida Berganos (Berganos) that petitioner was conducting an illicit affair with Francisco during her employment; and that procedural due process was observed prior to petitioner's termination from employment, in that she was given access to documentary evidence and was accorded a scheduled hearing, but she chose not to attend the same.

**Our Ruling**

The Court denies the Petition.

In essence, petitioner claims that respondents were not able to adduce substantial evidence to prove that she received the cash advances attributed to her; as such, she is not bound to account therefor. Unfortunately for petitioner, this contention requires a calibration of facts which is not within the ambit of the present Petition.

In labor cases, issues of fact are for the labor tribunals and the CA to resolve, as this Court is not a frier of facts. In the present case, since the Labor Arbiter, the NLRC, and the CA are unanimous in their finding that petitioner was not illegally dismissed, this Court must abide by such conclusion. "Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality

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[17] *Id.* at 77-106, at 86.

by this Court, more so when they coincide with those of the Labor Arbiter. Such factual findings are given more weight when the same are affirmed by the Court of Appeals."[18] Since there is no divergence between the findings of these three tribunals, there is no need to go over the evidence once more in order to resolve the issues relative to petitioner's failure to liquidate her cash advances and the manner by which she was terminated. Suffice it to state that —

> We reiterate the rule that in cases of dismissal for breach of trust and confidence, proof beyond reasonable doubt of an employee's misconduct is not required. It is sufficient that the employer had reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position. In the case at bench, it cannot be doubted that petitioner succeeded in discharging its burden of proof.[19]

In any event, we reviewed the records of the case and found that, contrary to petitioner's contention, there was substantial evidence showing that the subject cash advances were properly attributed to petitioner and that she failed to liquidate the same. In short, there was just cause to dismiss her from the service.

It is also beyond cavil that respondents observed the requirements of procedural due process. In the first notice to explain, petitioner was properly informed of the charge against her, *i.e.,* failure to liquidate the cash advances. In addition, respondents allowed petitioner access to company records in order for the latter to thoroughly prepare her explanation and defense. Considering the circumstances, respondents even generously granted petitioner more time to sift through the company records. However, petitioner was only able to liquidate a small portion of the cash advances; she failed to explain how

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[18] *Emeritus Security and Maintenance Systems, Inc. v. Dailig,* G.R. No. 204761, April 2, 2014, 720 SCRA 572, 578-579.

[19] *Maranaw Hotel & Resort Corp.* v. *National Labor Relations Commission,* 314 Phil. 270, 279 (1995).

and where she spent the rest. Consequently, respondents have no other recourse but to dismiss petitioner for loss of trust and confidence. It is on record that respondents notified petitioner of her termination from service.

Finally, no ill motive or bad faith may be attributed to respondents. It is on record that respondents even acceded to petitioner's request for a graceful exit. However, the discovery of anomalies connected with her office simply took away her privilege of receiving monetary benefits at such exit, which, despite the unfortunate circumstances, Leonor was graciously willing to grant.

For violating the trust and confidence reposed in her, petitioner is not entitled to any benefit in leaving Cord, Inc.

In view of the foregoing, there is no need to discuss the other issues raised by petitioner.

**WHEREFORE,** the Petition is **DENIED**, The assailed October 26, 2011 Decision and January 18, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 116098 are **AFFIRMED**.

**SO ORDERED.**

*Carpio (Chairperson)* and *Leonen, JJ.,* concur.

*Brion, J.,* on leave.

*Mendoza, J.,* on official leave.

**SECOND DIVISION**

[G.R. No. 206649. July 20, 2016]

**FOREST HILLS GOLF AND COUNTRY CLUB, INC., represented by RAINIER L. MADRID, in a derivative capacity as shareholder and club member,** *petitioner, vs.* **FIL-ESTATE PROPERTIES, INC., and FIL-ESTATE GOLF DEVELOPMENT, INC.,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; COURTS; JURISDICTION; JURISDICTION IS CONFERRED BY LAW AND IS DETERMINED BY THE MATERIAL ALLEGATIONS OF THE COMPLAINT, CONTAINING THE CONCISE STATEMENT OF ULTIMATE FACTS OF A PLAINTIFF'S CAUSE OF ACTION; JURISDICTION OVER INTRACORPORATE DISPUTES, INCLUDING DERIVATIVE SUITS, IS VESTED IN THE REGIONAL TRIAL COURTS DESIGNATED AS SPECIAL COMMERCIAL COURTS.—** It is a fundamental principle that jurisdiction is conferred by law and is determined by the material allegations of the complaint, containing the concise statement of ultimate facts of a plaintiff's cause of action. x x x. Based on the x x x allegations, it is clear that Madrid filed a derivative suit on behalf of petitioner FHGCCI to compel respondents FEPI and FEGDI to complete the golf course and country club project and to render an accounting of all works done, existing work-in-progress and, if any, differential backlog. The fact that petitioner FHGCCI denominated the Complaint as a derivative suit for specific performance is sufficient reason for the RTC to dismiss it for lack of jurisdiction, as the RTC where the Complaint was raffled is not a special commercial court. Upon the enactment of RA No. 8799, jurisdiction over intra-corporate disputes, including derivatives suits, is now vested in the RTCs designated as special commercial courts by this Court pursuant to A.M. No. 00-11-03-SC promulgated on November 21, 2000.

2. **COMMERCIAL LAW; CORPORATIONS; INTERIM RULES OF PROCEDURE GOVERNING INTRA-CORPORATE CONTROVERSIES; INTRA-CORPORATE CONTROVERSIES, WHEN PRESENT.—** Petitioner FHGCCI's contention that the instant case does not involve an intra-corporate controversy as it was filed against respondents FEPI and FEGDI as developers, and not as shareholders of the corporation holds no water. Apparent in the Complaint are allegations of the interlocking directorship of the Board of Directors of petitioner FHGCCI and respondents FEPI and FEGDI, the conflict of interest of the Board of Directors of petitioner FHGCCI, and their bad faith in carrying out their duties. Likewise alleged is that respondent FEPI and, later, respondent FEGDI are shareholders of petitioner FHGCCI which under the project agreement, respondent FEPI was tasked to perform the development and construction work and other obligations and undertakings of the project as full payment of its subscription to the authorized capital stock of petitioner FHGCCI, which it later assigned to respondent FEGDI. Considering these allegations, we find that, contrary to the claim of petitioner FHGCCI, there are unavoidably intra-corporate controversies intertwined in the specific performance case.

3. **ID.; ID.; ID.; DERIVATIVE SUIT; THE CORPORATION'S POWER TO SUE IS LODGED WITH ITS BOARD OF DIRECTORS OR TRUSTEES, BUT WHEN ITS OFFICIALS REFUSE TO SUE, OR ARE THE ONES TO BE SUED, OR HOLD CONTROL OF THE CORPORATION, AN INDIVIDUAL STOCKHOLDER MAY BE PERMITTED TO INSTITUTE A DERIVATIVE SUIT TO ENFORCE A CORPORATE CAUSE OF ACTION ON BEHALF OF A CORPORATION IN ORDER TO PROTECT OR VINDICATE ITS RIGHTS.—** [A] derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority. Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees. However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights. In such actions, the corporation is the real party in interest, while the stockholder suing on behalf of

the corporation is only a nominal party. Considering its purpose, a derivative suite, therefore, would necessarily touch upon the internal affairs of a corporation. It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001.

4. **ID.; ID.; ID.; ID.; REQUISITES FOR A VALID DERIVATIVE SUIT, NOT COMPLIED WITH.—** Corollarily, "[f]or a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit." It is also required that the stockholder "should have exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires [and that such fact is alleged] with particularity in the complaint." The purpose for this rule is "to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed." Finally, the stockholder is also required "to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts complained of, as well as a categorical statement that the suit is not a nuisance or a harassment suit." In this case, Madrid, as a shareholder of petitioner FHGCCI, failed to allege with particularity in the Complaint, and even in the Amended Complaint, that he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, or rules governing the corporation; that no appraisal rights are available for the acts or acts complained of; and that the suit is not a nuisance or a harassment suit. Although the Complaint alleged that demand letters were sent to the Board of Directors of petitioner FHGCCI and that these were unheeded, these allegations will not suffice. Thus, for failing to meet the requirements set forth in Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the Complaint, denominated as a derivative suit for specific performance, must be dismissed.

**APPEARANCES OF COUNSEL**

*Madrid Danao & Carullo* for petitioner.
*Patrick A. Padilla* for respondents.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

"A derivative action is a suit by a shareholder to enforce a corporate cause of action x x x on behalf of the corporation in order to protect or vindicate [its] rights [when its] officials refuse to sue, or are the ones to be sued, or hold control of [it]."[1] Upon the enactment of Republic Act (RA) No. 8799, otherwise known as "The Securities Regulation Code," jurisdiction over such action now lies with the special commercial courts designated by this Court pursuant to A.M. No. 00-11-03-SC promulgated on November 21, 2000.[2]

This Petition for Review on *Certiorari*[3] under Rule 45 of the Rules of Court assails the Orders dated May 14, 2012[4] and February 1, 2013[5] of the Regional Trial Court (RTC), Branch 74, Antipolo City, in Civil Case No. 10-9042.

***Factual Antecedents***

On March 31, 1993, Kingsville Construction and Development Corporation (Kingsville) and Kings Properties Corporation (KPC) entered into a project agreement with respondent Fil-Estate Properties, Inc. (FEPI), whereby the latter agreed to finance and cause the development of several parcels of land owned by Kingsville in Antipolo, Rizal, into Forest Hills Residential Estates and Golf and Country Club, a first-class residential area/

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[1] *Hi-Yield Realty, Inc. v. Court of Appeals,* 608 Phil. 350, 358 (2009).

[2] *Yu v. Yukayguan,* 607 Phil. 581, 606 (2009).

[3] *Rollo,* pp. 17-47.

[4] *Id.* at 48-54; penned by Presiding Judge Mary Josephine P. Lazaro.

[5] *Id.* at 55.

golf-course/commercial center.[6] Under the agreement, respondent FEPI was tasked to incorporate petitioner Forest Hills Golf and Country Club, Inc. (FHGCCI) with an authorized stock of 3,600 shares; and to perform the development and construction work and other undertakings as full payment of its subscription to the authorized capital stock of the club.[7] As to the remaining shares of the club, they agreed that these should be retained by Kingsville in exchange for the parcels of land used for the golf course development.[8]

On July 10, 1995, respondent FEPI assigned its rights and obligations over the project to a related corporation, respondent Fil-Estate Golf Development, Inc. (FEGDI).[9]

On July 19, 1996, Rainier L. Madrid (Madrid) purchased two Class "A" shares at the secondary price of ₱380,000.00 each, and applied for a membership to the club for ₱25,000.00.[10]

Due to the delayed construction of the second 18-Hole Golf Course, Madrid wrote two demand letters dated October 29, 2009 and March 15, 2010 to the Board of Directors of petitioner FHGCCI asking them to initiate the appropriate legal action against respondents FEPI and FEGDI.[11] The Board of Directors, however, failed and/or refused to act on the demand letters.[12]

Thus, on April 21, 2010, Madrid, in a derivative capacity on behalf of petitioner FHGCCI, filed with the RTC of Antipolo City a Complaint for Specific Performance with Damages,[13]

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[6] *Id*. at 58 and 75.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 61.

[11] *Id*. at 62-63.

[12] *Id*. at 63.

[13] *Id*. at 56-67.

docketed as Civil Case No. 10-9042, against respondents FEPI and FEGDI.[14]

In their Answer with Compulsory Counterclaim,[15] respondents FEPI and FEGDI argued that there is no cause of action against them as petitioner FHGCCI failed to state the contractual and/or legal bases of their alleged obligation; that no prior demand was made to them; that the action is not a proper derivative suit as petitioner FHGCCI failed to exhaust all remedies available under the articles of incorporation and by-laws; and that petitioner FHGCCI failed to implead its Board of Directors as indispensable parties.

Petitioner FHGCCI, in turn, filed a Reply[16] arguing that the case does not involve an intra-corporate controversy and that the exhaustion of intra-corporate remedies was futile and useless as the Board of Directors of petitioner FHGCCI also own respondent FEGDI.

Respondents FEPI and FEGDI filed a Rejoinder[17] followed by a Motion[18] to set their affirmative defenses for preliminary hearing.

Petitioner FHGCCI filed a Motion[19] for leave to amend its Complaint to implead KPC and Kingsville as additional defendants and to include Madrid as additional plaintiff in his personal capacity. Respondents FEPI and FEGDI opposed the Motion.[20]

***Ruling of the Regional Trial Court***

On May 14, 2012, applying the relationship and nature of controversy tests in *Reyes v. Hon. RTC of Makati, Br. 142*[21]

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[14] *Id*. at 26.

[15] *Id*. at 206-218.

[16] *Id*. at 219-222.

[17] *Id*. at 223-228.

[18] *Id* at 229-232.

[19] *Id*. at 233-236.

[20] *Id*. at 251-256.

[21] 583 Phil. 591 (2008).

and taking into account the fact that petitioner FHGCCI denominated the Complaint as a derivative suit, the RTC issued an Order[22] dismissing the case for lack of jurisdiction, without prejudice to the re-filing of the same with the proper special commercial court sitting at Binangonan, Rizal. Consequently, the motion for leave to amend the Complaint was mooted.

Feeling aggrieved, petitioner FHGCCI moved for reconsideration[23] but the RTC denied the same in its Order[24] dated February 1, 2013.

**Issue**

Hence, petitioner FHGCCI directly filed before this Court the instant Petition for Review on *Certiorari*[25] under Rule 45 of the Rules of Court on a pure question of law, raising the sole issue of:

WHETHER OR NOT PETITIONER [FHGCCI'S] ORDINARY CIVIL SUIT FOR SPECIFIC PERFORMANCE WITH DAMAGES AGAINST RESPONDENTS [FEPI AND FEGDI] VIS-A-VIS THE LATTER'S OBLIGATION UNDER THE PROJECT AGREEMENT TO FULLY COMPLETE AND DEVELOP THE FOREST HILLS RESIDENTIAL ESTATES AND GOLF COURSE AND COUNTRY CLUB IS COGNIZABLE BY THE LOWER COURT AS A REGULAR COURT OR BY THE RTC-BINANGONAN, BRANCH 70, AS A SPECIAL COMMERCIAL COURT FOR INTRA-CORPORATE CONTROVERSIES.[26]

***Petitioner FHGCCI's Arguments***

Petitioner FHGCCI admits that it filed a derivative suit.[27] However, it contends that not all derivative suits involve intra-

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[22] *Rollo,* pp. 48-54.

[23] *Id*. at 284-298.

[24] *Id*. at 55.

[25] *Id*. at 17-47.

[26] *Id*. at 332-333.

[27] *Id*. at 339-340.

corporate controversies.[28] In this case, it filed a derivative suit for specific performance in order to enforce the project agreement between KPC, Kingsville, and respondents FEPI and FEGDI.[29] And although respondent FEGDI is a stockholder of petitioner FHGCCI, it argues that this does not make the instant case an intra-corporate controversy as the case was filed against respondents FEPI and FEGDI as developers, and not as stockholders of petitioner FHGCCI.[30] In fact, the causes of action stated in the Complaint do not involve intra-corporate controversies, nor do these involve the intra-corporate relations between and among the stockholders and the corporation's officials.[31] Thus, the RTC seriously erred in applying the case of *Reyes*[32] without clearly explaining why the instant case involves an intra-corporate controversy.[33]

***Respondents' Arguments***

Respondents FEPI and FEGDI, on the other hand, reiterate the arguments raised in their Answer before the RTC, to wit: that petitioner FHGCCI has no cause of action as it failed to present any contract upon which it can base its claim; that the filing of the case is premature as no prior demand was made to respondents FEPI and FEGDI; that the Complaint is not a proper derivative suit as petitioner FHGCCI failed to exhaust all remedies available under the articles of incorporation and by-laws; and that petitioner FHGCCI failed to implead its Board of Directors as indispensable parties.[34] They also maintain that the instant case is an intra-corporate controversy as the allegations in the Complaint clearly show that petitioner FHGCCI is suing respondents FEPI and FEGDI not only as developers but also

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[28] *Id*. at 340-342.

[29] *Id*. at 343.

[30] *Id*. at 338.

[31] *Id*. at 337-339.

[32] *Supra* note 21.

[33] *Rollo,* pp. 343-347.

[34] *Id*. at 361.

as stockholders of petitioner FHGCCI.[35] And since the instant case involves an intra-corporate controversy, the RTC correctly dismissed the Complaint for lack of jurisdiction, as the RTC is not a special commercial court.[36]

**Our Ruling**

The Petition lacks merit.

***The Complaint, denominated as a derivative suit for specific performance, falls under the jurisdiction of special commercial courts.***

Petitioner FHGCCI's main contention is that its Complaint, although denominated as a derivative suit, does not fall under the jurisdiction of special commercial courts, as it does not involve an intra-corporate controversy.

We do not agree.

It is a fundamental principle that jurisdiction is conferred by law and is determined by the material allegations of the complaint, containing the concise statement of ultimate facts of a plaintiff's cause of action.[37]

In this case, petitioner FHGCCI alleged in its Complaint that:

PREFATORY

**This is a derivative suit filed by Shareholder and Club Member Rainier Madrid on behalf of [petitioner FHGCCI]** to compel [respondents FEPI and FEGDI], to finish the construction and complete development of Club's Arnold Palmer 2nd Nine-Holes Golf Course and the adjunct Country Club Premises.

Despite repeated demands on FHGCCI, which appears **controlled and managed by interlocking directors of [respondents FEPI and**

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[35] *Id.* at 361-365.

[36] *Id.* at 365-366.

[37] *Heirs of Telesforo Julao v. De Jesus,* G.R. No. 176020, September 29, 2014, 736 SCRA 596, 605, citing *Padlan v. Spouses Dinglasan,* 707 Phil. 83, 91 (2013).

**FEGDI] as an "OLD BOYS CLUB," and therefore guilty of grave conflict of interest to initiate legal actions against developer [respondent] FEGDI** *vis-a-vis* the completion of the Club's Arnold Palmer 2nd Nine-Holes Golf Course and the promised Country Club Facilities, **FHGCCI has failed, shirked, and refused to sue the [respondents FEPI and FEGDI].**

**This BAD FAITH inaction and refusal to sue [respondents FEPI and FEGDI] by the FHGCCI Board of Directors is definitely prejudicial to FHGCCI and its members** as they have been long deprived the maximum use of the promised Full 36-Hole Golf Course and Country Club Amenities, thereby rendering them in fundamental and material breach of their SEC Disclosure Statements, Marketing and Sales Contracts.

**The FHGCCI Board of Directors [are] guilty of grave conflict of interest as Founder Shareholders Noel M. Cariño, Robert John L. Sobrepeña, Ferdinand T. Santos and Enrique Sobrepeña, Jr. are also the majority Board of Directors of [respondent] FEPI and later [respondent] FEGDI,** who for more than ten (10) years NOW **has failed and refused to complete the Project for which they should have sued [respondents] FEPI [and] FEGDI as early as 2000.**

Indeed, the control, exclusive management and operations of FHGCCI, which should have been turned-over to the General Membership, has been illegally withheld, retained and continued to be enjoyed by FHGCCI Board of Directors via their abusive, void and illegal Founder's Shares, subject now of a separate suit to compel turnover of the FHGCCI to its General Membership.

**The patent interlocking directorship of FHGCCI and [respondents] FEPI /FEGDI sufficiently shows the abuse, high handed and condescending strong arm posture of FHGCCI Board of Directors in failing or refraining from suing [respondents] FEPI [and] FEGDI as the developer for the full and total completion of [the] 36-Hole Golf Course and adjunct Country Club facilities.**

HENCE, THIS DERIVATIVE SUIT.

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ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

x x x x x x x x x

4. On June 29, 1995, **[respondent] FEPI incorporated the Golf and Country Club Company** - [FHGCCI] x x x.

Per FHGCCI's Articles of Incorporation, fifty (50%) percent of its authorized member shares appears to have been distributed as follows:

| SUBSCRIBERS | NUMBER AND KIND OF SHARES |
|---|---|
| 1. Noel M. Cariño | 1 Founder's Share |
| 2. Robert John L. Sobrepeña | 1 Founder's Share |
| 3. Ferdinand T. Santos | 1 Founder's Share |
| 4. Sabrina T.Santos | 1 Founder's Share |
| 5. Enrique Sobrepeña, Jr. | 1 Founder's Share |
| 6. Johnson Ong | 1 Founder's Share |
| 7. Romeo G. Carlos | 1 Founder's Share |
| 8. Manuel Yu | 1 Founder's Share |
| 9. FEGDI | 537 Class "A", 190 Class "B", 292 Class "C", 146 Class "D"; total = 1165 |
| 10. Kings Properties Corp. | 290 Class "A", 102 Class "B", 292 Class "C", 146 Class "D"; total = 627 |

x x x x x x x x x

10. Worse, **with manifest intention of giving undue benefit, gain and/or advantage to [respondents] FEPI/FEGDI and to retain control of FHGCCI via the Founders' Shares, the FHGCCI Board of Directors appear to have deliberately failed, shirked and refused to sue, act and demand that [respondents] FEPI/FEGDI complete and finish the construction and/or turn-over of the second golf course,** specifically the Arnold Palmer 2nd Nine-Holes and the additional "Country Club" premises and adjunct country club facilities, to enable them, as "Founder Shareholders," to hold on to, continue their control and exclusive management of the Club, as an "OLD BOYS CLUB," to the damage and prejudice of FHGCCI, and its members whose corporate rights remain IN LIMBO to date.

x x x x x x x x x

13. To date, however, **the FHGCCI Board of Directors intentionally and deliberately failed and/or refused to heed Shareholder and Club Member Rainier L. Madrid and numerous undisclosed members of FHGCCI's above valid and just demand,**

**to the damage and prejudice of [petitioner] FHGCCI and its Members.**

x x x x x x x x x

2.2 As shown, for more than ten (10) years now from the stipulated full completion of the 2nd 18-Holes Arnold Palmer Golf Course, and the country club facilities in September 2000, **the FHGCCI Board of Directors, being guilty of apparent conflict of interest prescinding from their interlocking directorships, have deliberately and purposely failed, shirked and/or refused to demand and sue [respondents] developer FEPI/FEGDI to fully complete the Project,** especially the 36-Hole Golf Course, and adjunct Country Club and commercial complex amenities, to the grave damage and prejudice of [petitioner] FHGCCI and its Members. It is pure and simple, SYNDICATED ESTAFA.

2.3. Consequently, [respondents FEPI and FEGDI], jointly and severally, should be compelled, ordered and directed to fully perform, finish, complete and turn-over the whole 36-Hole Golf Course and Country Club Amenities soonest.

x x x x x x x x x

3.2. Additionally, [respondents] FEPI and FEGDI must be ordered to render an accounting of ALL work done, EXISTING work-in-progress, if any, and differential backlog in connection with their performance and delivery of the Project, including the contracted 36-Hole Golf Course and Country Club Amenities.[38] (Emphasis supplied)

Based on the foregoing allegations, it is clear that Madrid filed a derivative suit on behalf of petitioner FHGCCI to compel respondents FEPI and FEGDI to complete the golf course and country club project and to render an accounting of all works done, existing work-in-progress and, if any, differential backlog. The fact that petitioner FHGCCI denominated the Complaint as a derivative suit for specific performance is sufficient reason for the RTC to dismiss it for lack of jurisdiction, as the RTC where the Complaint was raffled is not a special commercial court. Upon the enactment of RA No. 8799, jurisdiction over

[38] *Rollo,* pp. 56-64.

intra-corporate disputes, including derivatives suits, is now vested in the RTCs designated as special commercial courts by this Court pursuant to A.M. No. 00-11-03-SC promulgated on November 21, 2000.[39]

Petitioner FHGCCI's contention that the instant case does not involve an intra-corporate controversy as it was filed against respondents FEPI and FEGDI as developers, and not as shareholders of the corporation holds no water. Apparent in the Complaint are allegations of the interlocking directorships of the Board of Directors of petitioner FHGCCI and respondents FEPI and FEGDI, the conflict of interest of the Board of Directors of petitioner FHGCCI, and their bad faith in carrying out their duties. Likewise alleged is that respondent FEPI and, later, respondent FEGDI are shareholders of petitioner FHGCCI which under the project agreement, respondent FEPI was tasked to perform the development and construction work and other obligations and undertakings of the project as full payment of its subscription to the authorized capital stock of petitioner FHGCCI, which it later assigned to respondent FEGDI. Considering these allegations, we find that, contrary to the claim of petitioner FHGCCI, there are unavoidably intra-corporate controversies intertwined in the specific performance case.

Moreover, a derivative suit is a remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority.[40] Under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees.[41] However, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights.[42] In such

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[39] *Yu v. Yukayguan, supra* note 2,

[40] *Majority Stockholders of Ruby Industrial Corporation v. Lim,* 665 Phil. 600,632 (2011).

[41] *Hi-Yield Realty, Inc. v. Court of Appeals, supra* note 1.

[42] *Id*.

actions, the corporation is the real party in interest, while the stockholder suing on behalf of the corporation is only a nominal party.[43] Considering its purpose, a derivative suit, therefore, would necessarily touch upon the internal affairs of a corporation. It is for this reason that a derivative suit is among the cases covered by the Interim Rules of Procedure Governing Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001. Section l(a), Rule 1 of the said Interim Rules states that:

**RULE 1**

*General Provisions*

SECTION 1. (a) *Cases Covered*— These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;

(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;

(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;

**(4) Derivative suits;** and

(5) Inspection of corporate books.

In view of the foregoing, we agree with the RTC that the instant derivative suit for specific performance against respondents FEPI and FEGDI falls under the jurisdiction of special commercial courts.

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[43] *Id*.

In *Gonzales v. GJH Land, Inc.,*[44] we laid down the guidelines to be observed if a commercial case filed before the proper RTC is wrongly raffled to its regular branch. In that case, we said that if the RTC has no internal branch designated as a Special Commercial Court, the proper recourse is to refer the case to the nearest RTC with a designated Special Commercial Court branch within the judicial region. Upon referral, the RTC to which the case was referred to should redocket the case as a commercial case. And if the said RTC has only one branch designated as a Special Commercial Court, it should assign the case to the sole special branch.

***The Complaint filed by petitioner FHGCCI failed to comply with the requisites for a valid derivative suit.***

In this case, however, to refer the case to a special commercial court would be a waste of time since it is apparent on the face of the Complaint, as pointed out by respondents FEPI and FEGDI in their Answer, that petitioner FHGCCI failed to comply with the requisites for a valid derivative suit.

Rule 8, Section 1 of the Interim Rules of Procedure Governing Intra-Corporate Controversies provides:

SECTION 1. Derivative action. — A stockholder or member may bring an action in the name of a corporation or association, as the case may be, provided, that:

(1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

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[44] G.R. No. 202664, November 10, 2015.

(4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

Corollarily, "[f]or a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit."[45] It is also required that the stockholder "should have exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires [and that such fact is alleged] with particularity in the complaint."[46] The purpose for this rule is "to make the derivative suit the final recourse of the stockholder, after all other remedies to obtain the relief sought had failed."[47] Finally, the stockholder is also required "to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts complained of, as well as a categorical statement that the suit is not a nuisance or a harassment suit."[48]

In this case, Madrid, as a shareholder of petitioner FHGCCI, failed to allege with particularity in the Complaint, and even in the Amended Complaint, that he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, or rules governing the corporation; that no appraisal rights are available for the acts or acts complained of; and that the suit is not a nuisance or a harassment suit. Although the Complaint alleged that demand letters were sent to the Board of Directors of petitioner FHGCCI and that these were unheeded, these allegations will not suffice.

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[45] *Chua v. Court of Appeals,* 485 Phil. 644, 655 (2004).

[46] *Yu v. Yukayguan, supra* note 2 at 612.

[47] *Id*.

[48] *Id*. at 613.

Thus, for failing to meet the requirements set forth in Section 1, Rule 8 of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the Complaint, denominated as a derivative suit for specific performance, must be dismissed.

**WHEREFORE,** the Petition is hereby **DENIED.** The assailed Orders dated May 14, 2012 and February 1, 2013 of the Regional Trial Court, Branch 74, Antipolo City, in Civil Case No. 10-9042 are hereby **AFFIRMED.**

**SO ORDERED.**

*Carpio (Chairperson)* and *Leonen, JJ.,* concur.

*Brion, J.,* on leave.

*Mendoza, J.,* on official leave.

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**THIRD DIVISION**

[G.R. No. 208527. July 20, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **ARDO BACERO *y* CASABON,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ALLEGATIONS OF TORTURE SHALL BE DISREGARDED ABSENT PROOF THEREOF, SUCH AS A MEDICAL CERTIFICATE, THAT WOULD SHOW THAT ACCUSED-APPELLANT SUFFERED BODILY HARM WHILE UNDER THE CUSTODY OF POLICE OFFICERS.—** Accused-appellant claims that he was coerced into admitting the crime. We hold that his allegation of being subjected to torture does not find support in the evidence on record. There was no proof, such as a medical certificate,

that would show that accused-appellant suffered bodily harm while under the custody of police officers. In previous cases, the Court has disregarded allegations of torture when the accused did not file any complaint against his alleged malefactors for maltreatment.

2. **ID.; REPUBLIC ACT NO. 7438; RIGHTS OF PERSONS ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION; ACCUSED'S EXTRA-JUDICIAL CONFESSION AT THE POLICE STATION IS INADMISSIBLE IN EVIDENCE, WHERE THE ADMISSION WAS NEITHER PUT INTO WRITING NOR MADE IN THE PRESENCE OF PERSONS MENTIONED IN THE LAW.—** Notwithstanding the fact that torture was not sufficiently proven, the extra-judicial confession made at the police station remains inadmissible in evidence. R.A. No. 7438, the law defining the rights of persons under custodial investigation, provides: "Section 2. (d) — Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding." The admission made by accused-appellant was neither put into writing nor made in the presence of persons mentioned in the law. Thus, there can be no conclusion other than that the extra-judicial confession is inadmissible in evidence.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE CREDIBILITY OF A WITNESS IS IN ISSUE, THE TRIAL COURT'S CALIBRATION OF THE TESTIMONIES OF THE WITNESSES AND ITS ASSESSMENT OF THE PROBATIVE WEIGHT THEREOF, ARE ACCORDED HIGH RESPECT IF NOT CONCLUSIVE EFFECT, MOST ESPECIALLY WHEN SUCH FINDINGS ARE AFFIRMED BY THE APPELLATE COURT, UNLESS THERE IS A CLEAR SHOWING THAT THE TRIAL COURT AND THE APPELLATE COURT OVERLOOKED, MISUNDERSTOOD OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES OF WEIGHT AND**

**SUBSTANCE.—** The defense maintains that Juliet's testimony anent the identity of accused-appellant as one of the perpetrators is highly doubtful. Accused-appellant harps on the inconsistencies in Juliet's statements regarding the suspects' identities. We cannot sustain such argument casting doubt on Juliet's positive identification of accused-appellant's participation in the commission of the crime. Time and again, this Court has held that when the credibility of a witness is in issue, the trial court's calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, are accorded high respect if not conclusive effect, most especially when such findings are affirmed by the appellate court. Unless there is a clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this rule should not be disturbed.

4. **ID.; ID.; CREDIBILITY OF WITNESSES; IDENTIFICATION OF ACCUSED; WAYS OF CONDUCTING OUT-OF-COURT IDENTIFICATION OF ACCUSED; TOTALITY OF CIRCUMSTANCES TEST; FACTORS TO CONSIDER.** — Jurisprudence is replete with various ways of conducting out-of-court identifications. It may be done thru **show-ups,** where the suspect alone is brought face to face with the witness or thru **mug shots,** where only photographs are shown to the witness. Identification can also be done thru **line-ups** where a witness identifies the suspect from a group of persons. To maintain the integrity of in-court identification during trial, courts have fashioned out rules to assure its fairness and compliance with the requirements of constitutional due process. In a long line of cases, the Court has reiterated the **totality of circumstances test** adopted from American Jurisprudence and set forth in *People v. Teehankee, Jr.*, which has been the guide in resolving the admissibility of out-of-court identification. Under the totality of circumstances test, the following factors are considered: (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. **ID.; ID.; ID.; ID.; THE MOST NATURAL REACTION OF A WITNESS TO A CRIME IS TO STRIVE TO LOOK AT THE APPEARANCE OF THE PERPETRATOR AND TO OBSERVE THE MANNER IN WHICH THE OFFENSE IS PERPETRATED, AND MOST OFTEN, THE FACE AND BODY MOVEMENTS OF THE ASSAILANT CREATE A LASTING IMPRESSION WHICH CANNOT BE EASILY ERASED FROM THEIR MEMORY.—** Juliet identified accused-appellant out-of-court on two separate occasions, *viz*: (1) when she saw accused-appellant in front of the latter's house after roaming the vicinity and (2) at a police line-up conducted by SPO1 Tecson. We rule that the out-of-court identifications made by Juliet satisfied the totality of circumstances test. Juliet was at the scene of the crime when the incident happened and she was able to see the faces of the assailants through the loosely tied blindfold. Moreover, the most natural reaction of a witness to a crime is "to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated." Most often, the face and body movements of the assailant create a lasting impression which cannot be easily erased from their memory. We agree with the appellate court that eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time precisely because of the unusual acts of violence committed right before their eyes. Though this Court is aware that such pronouncement should be applied with great caution, there is no compelling circumstance in this case that would warrant its non-application.
6. **ID.; ID.; ID.; ID.; THE LACK OF A DETAILED DESCRIPTION OF THE ASSAILANTS SHOULD NOT LEAD TO A CONCLUSION THAT THE IDENTIFICATION WAS ERRONEOUS, AS VICTIMS OF VIOLENT CRIMES HAVE VARYING REACTIONS TO SHOCKING EVENTS.—** Accused-appellant contends that Juliet's description of the appellant as a man having long hair lacks the highest degree of certainty. We find this contention unmeritorious. The lack of a detailed description of the assailants should not lead to a conclusion that the identification was erroneous. Victims of violent crimes have varying reactions to shocking events. Juliet cannot be expected to immediately remember the detailed features of the assailants' faces as she was still in a state of shock. Though she was unable to describe in detail the appearances of the assailants, she was able to

immediately identify Bacero when she saw him two days after the incident.

7. **ID.; ID.; ID.; ID.; 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.—** [A]ssuming for the sake of argument that Juliet's out-of-court identification was improper, it will have no bearing on the conviction of accused-appellant. It has long been 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." Furthermore, the records show that there is no improper motive for Juliet to impute a serious crime to the accused-appellant.

8. **ID.; ID.; DEFENSE OF DENIAL; CANNOT PREVAIL OVER THE WITNESSES' POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANT, MORE SO WHERE THE DEFENSE DID NOT PRESENT CONVINCING EVIDENCE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR ACCUSED-APPELLANT TO HAVE BEEN PRESENT AT THE CRIME SCENE AT THE TIME OF THE COMMISSION OF THE CRIME.—** Accused-appellant posited the defense of mistaken identity which is essentially in the nature of denial and alibi. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime.

9. **ID.; ID.; CREDIBILITY OF WITNESSES; WHEN A DEFENSE WITNESS IS A CLOSE FRIEND, COURTS SHOULD VIEW SUCH TESTIMONY WITH SKEPTICISM, MORE SO WHEN THE SAME IS UNCORROBORATED.—** In accused-appellant's attempt to support his mistaken identity claim, the defense presented the testimony of Chiong, accused-

appellant's long time friend. The RTC and CA correctly did not give credence to the testimony of Chiong. When a defense witness is a close friend, courts should view such testimony with skepticism, more so when the same is uncorroborated, as in the case at bar.

10. **CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE, ELEMENTS; PROVED.—** The trial and appellate courts committed no error in convicting the accused-appellant of Robbery with Homicide. x x x. To warrant a conviction for Robbery with Homicide, the prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property taken thus belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed. In proving Robbery with Homicide, it is necessary that the robbery itself be established conclusively as any other essential element of the crime. In the instant case, the elaborate testimony of Juliet and her positive identification of accused-appellant as one of the assailants support the charge of the component offense of Robbery. In previous cases, We had occasion to explain that intent to rob is an internal act but it may be inferred from proof of violent unlawful taking of personal property and when the fact of asportation has been established beyond reasonable doubt, conviction is justified even if the subject property is not presented in court. "After all, the property stolen may have already been abandoned, thrown away or destroyed by the robber."

11. **ID.; ID.; ID.; WHEN THE KILLING IS COMMITTED BY REASON OF OR ON THE OCCASION OF THE ROBBERY, THE QUALIFYING CIRCUMSTANCES ATTENDANT TO THE KILLING WOULD BE CONSIDERED AS GENERIC AGGRAVATING CIRCUMSTANCES.—** In numerous cases, We held that when the killing is committed by reason of or on the occasion of the robbery, the qualifying circumstances attendant to the killing would be considered as generic aggravating circumstances. Thus, in the case at bar, the circumstance of abuse of superior strength serves to aggravate the crime.

12. **ID.; ID.; ID.; PROPER PENALTY.—** Persons found guilty of committing the special complex crime of Robbery with Homicide are punishable with *reclusion perpetua* to death. Considering that the generic aggravating circumstance of abuse of superior strength was alleged in the information and proven during the trial, accused-appellant shall suffer the penalty of death pursuant to Article 63 of the Revised Penal Code, as amended. Nonetheless, in light of R.A. No. 9346, the penalty shall be reduced from death to *reclusion perpetua* without eligibility for parole.

13. **CIVIL LAW; DAMAGES; AWARD OF CIVIL INDEMNITY AND MORAL DAMAGES, MODIFIED.—** Applying the adjusted amounts for damages laid down in the recently decided case of *People v. Jugueta*, We modify the damages awarded by the trial and appellate courts. Accused-appellant shall be liable to the heirs of the deceased for civil indemnity in the amount of ₱100,000.00, as the imposable penalty would have been death, were it not for the enactment of R.A. No. 9346. Accused-appellant shall also be liable for moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱100,000.00.

14. **ID.; ID.; ACTUAL DAMAGES; ONLY EXPENSES SUPPORTED BY RECEIPTS AND WHICH APPEAR TO HAVE BEEN ACTUALLY EXPENDED IN CONNECTION WITH THE DEATH OF THE VICTIMS MAY BE ALLOWED, AS SELF-SERVING STATEMENTS OF ACCOUNT ARE NOT SUFFICIENT BASIS FOR AN AWARD OF ACTUAL DAMAGES.—** In awarding actual damages amounting to ₱172,000.00, the RTC erroneously included amounts stated in handwritten lists of expenses, which were self-serving. A receipt dated months after the death of the victim was also erroneously included in the computation of actual damages awarded by the trial court. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed. Only substantiated expenses and those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts. This Court has repeatedly held that self-serving statements of account are not sufficient basis for an award of actual damages. To justify an award of actual

damages, it is necessary for the claimant to produce competent proof and the best evidence obtainable. Verily, "a list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions." The CA, on the other hand, erroneously excluded in the computation for actual damages the amount stated in an unofficial receipt issued by George & Elvie Store. The said tape receipt issued by the store, though unofficial because of the absence of a TIN number, contained material particulars such as the date of the transaction, the place of transaction, the items purchased, and the cost of items purchased. To the mind of this Court, the same constitutes competent proof. The heirs of the victims, as claimants, should not be prejudiced by the store's failure to issue official receipts.

15. **ID.; ID.; ID.; LOSS OF EARNING CAPACITY; THE INDEMNITY FOR LOSS OF EARNING CAPACITY PARTAKES OF THE NATURE OF ACTUAL DAMAGES, AND THUS MUST BE DULY PROVEN BY COMPETENT PROOF.—** [T]he heirs of the victim are likewise entitled to indemnity for loss of earning capacity amounting to ₱2,519,405.86. Such indemnification partakes of the nature of actual damages and thus, must be duly proven by competent proof. Estella, wife of the victim, testified on the income of her husband and presented documentary evidence to show that her husband was gainfully employed at the time of his death. A Certification dated July 03, 2006 issued by Mitsubishi Motors Philippines Corporation was presented to prove that the victim was employed in the said company as a regular sealing man with a salary rate of ₱80.33/hour. Pursuant to jurisprudence, such certification shall be considered as sufficient basis for a fair and reasonable computation of the victim's loss of earning capacity.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## DECISION

**PEREZ, *J*.:**

Before this court is an appeal of the July 26, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR.-H.C. No. 05040 affirming the January 11, 2011 Decision[2] of the Regional Trial Court (RTC) of Antipolo City, Branch 73 in Crim. Case No. 03-25345, finding accused-appellant Ardo Bacero *y* Casabon (accused-appellant) guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide as defined and penalized under Article 294, paragraph (1) of the Revised Penal Code, as amended by Section 9 of Republic Act No. 7659.

On March 27, 2003, an Information[3] for the special complex crime of Robbery with Homicide was filed against accused-appellant and several men whose true identities were unknown at the time of filing, namely, Victor Bisaya, Rodel, Rommel, John Doe and Peter Doe. The accusatory portion of the Information reads:

"That on or about the 24th day of March, 2003, in the Municipality of Taytay, Province of Rizal, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, in conspiracy with @Victor Bisaya, @Rodel, @Rommel, @John Doe, @Peter Doe[,] whose true identities and whereabouts are still unknown, with the use of deadly bladed weapons, with intent to gain and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously rob, take and divest one Virgilio San Juan[, Jr.] y Molina @Jun of his Nokia 3310 cellphone valued at Php4,500.00 and one Juliet Bunot y Dumdum of her Smart Buddy 3388 model cellphone valued at [₱]2,400.00 and cash money amounting to [₱]70.00, to the damage and prejudice of both offended parties in the total amount of Php6,970.00; that by reason and on the

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[1] *Rollo*, pp. 2-34; penned by Associate Justice Celia C. Librea-Leagogo, concurred by Associate Justices Franchito N. Diamante and Abraham B. Borreta.

[2] CA *Rollo*, pp. 10-14, penned by Judge Ronaldo B. Martin.

[3] Records, p. 1.

occasion of the robbery, the above-named accused, with intent to kill, and by means of the qualifying aggravating circumstances of treachery, evident premeditation and superior strength, did, then and there willfully, unlawfully and feloniously attack, assault and stab with said deadly bladed weapons, said Virgilio San Juan[, Jr.] y Molina @Jun, hitting him on the different parts of his body, thereby inflicting upon the victim mortal stabbed wounds which directly caused his death.

CONTRARY TO LAW."[4]

On arraignment, accused-appellant entered a plea of NOT GUILTY.[5] Trial on the merits ensued thereafter.

**The Facts**

The antecedent facts as culled from the Plaintiff-Appellee's Brief[6] and the records of the case are summarized as follows:

At around 4:45 o'clock in the afternoon of March 24, 2003, Juliet Dumdum-Bunot and her boyfriend, Virgilio "Jun" San Juan[, Jr., *y* Molina] were attacked by six men while they were having a small picnic at the Monteverde Royal Subdivision in Taytay, Rizal. One of the men, later identified as the accused-appellant, forcibly grabbed Jun's cellphone after stabbing him on the face with a knife. Juliet was unable to help Jun as her face was being shoved down towards her thighs by one of accused-appellant's companions. Every time Juliet fought back, the unidentified man punched her. Despite her struggle, Juliet could hear Jun shouting "*Huwag po, huwag po, Diyos ko po.*" Juliet was restrained by one of the men; her face was covered with a towel and her hands were tied with another towel. Fortunately, according to Juliet, the towel was loosely tied and thin enough for her to see through it and identify the man who attacked her. When Juliet freed herself from the loosely tied towels, she immediately looked for Jun but he was nowhere to be found. She sought assistance from the Monteverde Royale Subdivision security guards. They roamed around the subdivision and saw Jun's lifeless body in a grassy area.

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

[5] *Id.* at 25.

[6] CA *rollo*, pp. 90-91.

At the police station later that day, Juliet Dumdum Bunot (Juliet) told Senior Police Officer 1 Rogelio V. Marundan (SPO1 Marundan), then Chief Investigator of Taytay Police, that two of the assailants' faces were familiar to her but she was uncertain of their identities. She also mentioned that the face of one of the men who attacked Virgilio San Juan, Jr. *y* Molina (Jun) was familiar as she had seen him in the neighborhood. She identified said assailant as having long hair. Still distraught over the horrifying incident, Juliet was unable to remember the faces of the other assailants. She was advised to calm down and to head home. Two days after, Juliet informed Senior Police Officer 1 William S. Texon (SPO1 Texon) that she remembered one of the assailants. Juliet claimed that she was familiar with accused-appellant's face because she used to see him three to four times a week whenever he was plying his tricycle route outside her house. According to the *Pinagsamang Sinumpaang Salaysay*[7] executed by SPO1 Marundan, SPO1 Tecson and Police Officer 2 Manuelito Inosanto (PO2 Inosanto), a team of investigating officers and several civilian agents was formed for the purpose of conducting a follow-up investigation in the vicinity of Javier Compound, San Francisco Village, Muzon, Taytay, Rizal. During the conduct of the follow-up investigation, Juliet, accompanied by the investigating officers, spotted accused-appellant standing in front of his house and identified him as the long-haired assailant. The officers invited accused-appellant back to the police station. A police line-up was conducted and accused-appellant was positively identified by Juliet. Accused-appellant initially denied any involvement in the incident but after thirty minutes, he admitted to the robbery and the killing.[8] He also gave the names and whereabouts of his companions, namely: Victor Waray, a certain Rodel and Rommel, and another man who was an acquaintance of Victor Waray.

On July 10, 2003, Juliet executed a supplemental affidavit[9] for the purpose of identifying the other five assailants. Juliet

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[7] Records, pp. 18-19.

[8] TSN, July 19, 2007, p. 11.

[9] Records, p. 288; Exhibit "C".

implicated Victor "Waray" Magcuro (Victor), Rommel David (Rommel), Edwin Soberano *y* Dela Cruz (Edwin), Nelson Ampatin (Nelson) and Rodel Zacarias (Rodel). According to Juliet, she asked around for their respective names when she chanced upon the suspects having a drink outside a compound. Accused Edwin is a tricycle driver who knew Juliet since December 2002. On April 3, 2003, he was invited by the Taytay police for questioning but was immediately released by midnight of the same day. On October 23, 2003, he was arrested by virtue of a warrant. On January 11, 2011, the RTC eventually acquitted Edwin for lack of sufficient evidence to warrant his conviction.[10]

Accused-appellant proffers the defenses of alibi and denial. He posits that he was just a victim of mistaken identity and at the time the incident supposedly happened, he was in his house gathering wood. Moreover, accused-appellant claims that on the day he was arrested, he was forced to admit the crime after being tortured by the police.[11] Divina Esguerra Chiong (Chiong), a witness for the defense, executed an affidavit[12] dated April 8, 2003 claiming that she witnessed the incident from her sister's house, which was overlooking the scene of the crime, and that she is positive that accused-appellant was not one of the assailants.

The prosecution presented the testimony of Estella Arellano San Juan (Estella),[13] widow of the deceased, to prove that the deceased was gainfully employed and to prove the damages and expenses incurred in relation to the death of Jun.

**Ruling of the Regional Trial Court**

The RTC ruled that Juliet was able to positively identify accused-appellant as one of the six persons who approached Jun and was in fact, the person who used a knife in stabbing

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[10] *Supra* note 2.

[11] TSN, December 12, 2007, p. 12.

[12] Records, p. 314; Exhibit "4".

[13] TSN, July 13, 2006, p. 2.

Jun in the face. The trial court gave weight to the fact that Juliet was able to identify accused-appellant as one of the assailants as early as the day after the incident. The trial court held that the same categorical and straightforward identification cannot be said with respect to accused Edwin who was not immediately identified by Juliet despite the fact that he was already in police custody a little over a week after the incident. Edwin was only identified by Juliet when she executed her supplemental affidavit roughly 3 months after the incident. For the trial court, the fact that Edwin was arrested only on October 23, 2003 or 7 months after the incident makes his identification not quite similar to Juliet's identification of Bacero. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, accused Ardo Bacero y Garingo is hereby found GUILTY beyond reasonable [doubt] of the crime of Robbery with Homicide and is sentenced to suffer the penalty of *Reclusion Perpetua* and is ordered to pay the heirs of Virgilio San Juan[, Jr. *y* Molina] [₱]172,000.00 in actual damages, [₱]200,000.00 in moral damages, [₱]100,000.00 in exemplary damages with costs against suit.
>
> Accused Edwin Soberano is ACQUITTED of the crime charged for lack of sufficient evidence to warrant his conviction. He is therefore ordered released from detention unless he is being detained for some other case or cause other than the instant case.
>
> The case against Nelson Ampatin, Victor Magcoro, Rommel David and Rodel Zacarias is ordered archived and the corresponding warrant of arrest is hereby issued against them for their immediate apprehension.
>
> SO ORDERED.[14]

### Ruling of the Court of Appeals

Aggrieved by the RTC decision, accused-appellant elevated the case to the CA. Accused-appellant questioned Juliet's credibility and contended that her testimony anent the identity of the accused-appellant as one of the perpetrators is highly

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[14] CA *rollo*, p. 57.

doubtful for the reason that her statements were contradictory. Relying on a previous case,[15] the defense maintained that the fact that Juliet knew accused-appellant before the crime but made no accusation against him when questioned by the police is a danger signal indicating that identification may be erroneous.[16] The appellate court found no cogent reason to deviate from the findings of the trial court. The CA gave deference to the trial court's appreciation of the facts and credibility of witnesses. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 11 January 2011 of the Regional Trial Court, Fourth Judicial Region, Branch 73, Antipolo City in *Crim. Case No. 03-25345* finding accused-appellant Ardo Bacero y Casabon guilty beyond reasonable doubt of the crime of robbery with homicide under Article 294 (1) of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* is **AFFIRMED** with **MODIFICATION** in that accused-appellant, in addition to the said penalty, is **not** eligible for parole and he is further ordered to indemnify the heirs of the victim Virgilio San Juan, Jr. y Molina the following amounts: (1) Php75,000.00 as civil indemnity; (2) Php75,000.00 as moral damages; (3) Php30,000.00 as exemplary damages; (4) Php75,871.30 as actual damages; (5) Php2,518,634.68 for loss of earning capacity; and (6) interest on all damages awarded at the rate of 6% *per annum* from the finality of this judgment until fully paid. Costs against accused-appellant.
>
> **SO ORDERED**.[17]

Accused-appellant filed a Motion for Reconsideration of the July 26, 2012 Decision of the appellate court. Finding that the grounds relied upon in the said Motion were mere reiterations of the matters already considered passed upon, the CA denied the Motion for Reconsideration for lack of merit in a Resolution dated December 4, 2012. On December 26, 2012, accused-appellant appealed the Decision of the CA dated July 26, 2012.

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[15] *Lumanog, et al. v. People*, 644 Phil. 296, 399 (2010).

[16] CA *rollo*, p. 48; Accused-Appellant's Brief.

[17] *Rollo*, pp. 28-29.

Accused-appellant's Notice of Appeal was given due course and the records were ordered elevated to this Court for review.[18]

In a Resolution[19] dated October 9, 2013, this Court required the parties to submit their respective supplemental briefs. Both the OSG and the accused-appellant manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.[20]

## Our Ruling

This Court finds no reason to deviate from the findings and conclusions of the courts below as the degree of proof required in criminal cases has been met in the case at bar. We rule that accused-appellant's contentions of mistaken identity, torture, and denial are bereft of merit.

### *Extra-judicial Confession*

Accused-appellant claims that he was coerced into admitting the crime. We hold that his allegation of being subjected to torture does not find support in the evidence on record. There was no proof, such as a medical certificate, that would show that accused-appellant suffered bodily harm while under the custody of police officers. In previous cases, the Court has disregarded allegations of torture when the accused did not file any complaint against his alleged malefactors for maltreatment.[21]

Notwithstanding the fact that torture was not sufficiently proven, the extra-judicial confession made at the police station remains inadmissible in evidence. R.A. No. 7438, the law defining the rights of persons under custodial investigation, provides:

"Section 2. (d) – Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing

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[18] *Id.* at 191.

[19] *Rollo*, p. 40.

[20] *Id.* at 42-43 & 47-49.

[21] See *People v. Capitle, et al.,* 654 Phil. 351, 361 (2011) and *People v. Continente*, 393 Phil. 367, 394 (2000).

and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding."

The admission made by accused-appellant was neither put into writing nor made in the presence of persons mentioned in the law. Thus, there can be no conclusion other than that the extra-judicial confession is inadmissible in evidence. Nevertheless, the positive identification of accused-appellant as the perpetrator of the crime warrants his conviction.

***Positive Identification of Accused-appellant***

The defense maintains that Juliet's testimony anent the identity of accused-appellant as one of the perpetrators is highly doubtful. Accused-appellant harps on the inconsistencies in Juliet's statements regarding the suspects' identities. We cannot sustain such argument casting doubt on Juliet's positive identification of accused-appellant's participation in the commission of the crime. Time and again, this Court has held that when the credibility of a witness is in issue, the trial court's calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, are accorded high respect if not conclusive effect, most especially when such findings are affirmed by the appellate court.[22] Unless there is a clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this rule should not be disturbed.[23]

Jurisprudence is replete with various ways of conducting out-of-court identifications.[24] It may be done thru **show-ups**, where the suspect alone is brought face to face with the witness

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[22] *People v. Lugnasin, et al.*, G.R. No. 208404, February 24, 2016.

[23] *People v. Basao, et al.*, 697 Phil. 193, 209 (2012), citing *Decasa v. Court of Appeals*, 554 Phil. 160, 180 (2007).

[24] *People v. Teehankee, Jr.,* 319 Phil. 128, 181 (1995).

or thru **mug shots**, where only photographs are shown to the witness. Identification can also be done thru **line-ups** where a witness identifies the suspect from a group of persons.[25] To maintain the integrity of in-court identification during trial, courts have fashioned out rules to assure its fairness and compliance with the requirements of constitutional due process.[26] In a long line of cases, the Court has reiterated the **totality of circumstances test** adopted from American Jurisprudence and set forth in *People v. Teehankee, Jr.*,[27] which has been the guide in resolving the admissibility of out-of-court identification. Under the totality of circumstances test, the following factors are considered: (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.[28]

Juliet identified accused-appellant out-of-court on two separate occasions, *viz*: (1) when she saw accused-appellant in front of the latter's house after roaming the vicinity and (2) at a police line-up conducted by SPO1 Tecson. We rule that the out-of-court identifications made by Juliet satisfied the totality of circumstances test. Juliet was at the scene of the crime when the incident happened and she was able to see the faces of the assailants through the loosely tied blindfold. Moreover, the most natural reaction of a witness to a crime is "to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated."[29] Most often, the face and body movements of the assailant create a lasting impression which cannot be easily

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[25] *Id.* at 180.

[26] *Id.*

[27] *Id.*

[28] *Id.*; see *Neil v. Biggers*, 409 US 188 [1973]; *Manson v. Brathwaite*, 432 US 98 [1977].

[29] *People v. Esoy, et al.*, 631 Phil. 547, 555 (2010).

erased from their memory.[30] We agree with the appellate court that eyewitnesses can remember with a high degree of reliability the identity of criminals at any given time precisely because of the unusual acts of violence committed right before their eyes.[31] Though this Court is aware that such pronouncement should be applied with great caution, there is no compelling circumstance in this case that would warrant its non-application.

Accused-appellant contends that Juliet's description of the appellant as a man having long hair lacks the highest degree of certainty. We find this contention unmeritorious. The lack of a detailed description of the assailants should not lead to a conclusion that the identification was erroneous. Victims of violent crimes have varying reactions to shocking events. Juliet cannot be expected to immediately remember the detailed features of the assailants' faces as she was still in a state of shock. Though she was unable to describe in detail the appearances of the assailants, she was able to immediately identify Bacero when she saw him two days after the incident. Nevertheless, assuming for the sake of argument that Juliet's out-of-court identification was improper, it will have no bearing on the conviction of accused-appellant. It has long been 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."[32] Furthermore, the records show that there is no improper motive for Juliet to impute a serious crime to the accused-appellant.[33]

***Unmeritorious Defense of Mistaken Identity***

Accused-appellant posited the defense of mistaken identity which is essentially in the nature of denial and alibi. It is

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[30] *People v. Apawan*, G.R. No. 85329, August 16, 1994, 235 SCRA 355, 363.

[31] *Id.*

[32] *People v. Sabangan*, 723 Phil. 591, 614 (2013).

[33] *Supra* note 11 at 16-17.

established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime.[34] We quote with approval the disquisition of the appellate court, to wit:

> The defenses of denial and alibi are the weakest of defenses in criminal cases and the same are self-serving negative evidence. They cannot prevail over the spontaneous, positive, and credible testimony of the prosecution witness who pointed to and identified the accused-appellant as one of the malefactors. Moreover, for the defense of alibi to prosper, the requirements of time and place must be strictly met. It is not enough to prove that the accused was somewhere else when the crime was committed, but he must also demonstrate by clear and convincing evidence that it was physically impossible for him to have been at the scene of the crime at the time the same was committed. Accused-appellant's feeble, denial and alibi crumble in the face of Juliet's affirmative testimony.

In accused-appellant's attempt to support his mistaken identity claim, the defense presented the testimony of Chiong, accused-appellant's long time friend. The RTC and CA correctly did not give credence to the testimony of Chiong. When a defense witness is a close friend, courts should view such testimony with skepticism,[35] more so when the same is uncorroborated, as in the case at bar.

***Robbery with Homicide***

The trial and appellate courts committed no error in convicting the accused-appellant of Robbery with Homicide. Section 9, Article 294, paragraph (1) of the Revised Penal Code, as amended by R.A. No. 7659, reads:

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[34] *People v. Salcedo, et al.*, 667 Phil. 765, 775-776 (2011); citing *Lumanog v. People, supra* note 15.

[35] Cf. *People v. Villarino*, 628 Phil. 269, 285 (2010); citing *People v. Sumalinog, Jr.,* 466 Phil. 637, 650-651 (2004).

"Art. 294 — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson."

To warrant a conviction for Robbery with Homicide, the prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property taken thus belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed.[36] In proving Robbery with Homicide, it is necessary that the robbery itself be established conclusively as any other essential element of the crime.[37] In the instant case, the elaborate testimony of Juliet and her positive identification of accused-appellant as one of the assailants support the charge of the component offense of Robbery. In previous cases,[38] We had occasion to explain that intent to rob is an internal act but it may be inferred from proof of violent unlawful taking of personal property and when the fact of asportation has been established beyond reasonable doubt, conviction is justified even if the subject property is not presented in court. "After all, the property stolen may have already been abandoned, thrown away or destroyed by the robber."[39]

As to the allegation of the presence of the aggravating circumstance of abuse of superior strength, we quote the ruling of the CA with approval, to wit:

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[36] *People v. Consejero*, 404 Phil. 914, 932 (2001); citing *People v. Gamo*, 351 Phil. 944, 953-954 (1998).

[37] *People v. Dizon*, 394 Phil. 261, 283 (2000); citing *People v. Contega*, 388 Phil. 533, 549 (2000).

[38] *People v. De Leon,* 608 Phil. 701, 717 (2009*); People v. Puloc*, 279 Phil. 190, 197 (1991).

[39] *People v. Corre, Jr.*, 415 Phil. 386, 398 (2001).

"The trial court correctly appreciated the aggravating circumstance of abuse of superior strength. The aggravating circumstance of abuse of superior strength is considered whenever there is notorious inequality of forces between the victim and the aggressor that is plainly and obviously advantageous to the aggressor and purposely selected or taken advantage of to facilitate the commission of the crime. It is taken into account whenever the aggressor purposely used excessive force that is out of proportion to the means of defense available to the person attacked. The felonious acts of accused-appellant and the other malefactors of robbing and killing the victim were clearly executed with abuse of superior strength. Their combined force and physical strength overwhelmed the victim and left him defenseless. Accused-appellant struck with his knife the unarmed victim. The multiple stab wounds sustained by the victim indisputably show that the group of accused-appellant took advantage of their superior strength to perpetrate the crime."[40]

In numerous cases,[41] We held that when the killing is committed by reason of or on the occasion of the robbery, the qualifying circumstances attendant to the killing would be considered as generic aggravating circumstances. Thus, in the case at bar, the circumstance of abuse of superior strength serves to aggravate the crime.

***Penalty and Damages***

Persons found guilty of committing the special complex crime of Robbery with Homicide are punishable with *reclusion perpetua* to death.[42] Considering that the generic aggravating circumstance of abuse of superior strength was alleged in the information and proven during the trial, accused-appellant shall suffer the penalty of death pursuant to Article 63 of the Revised Penal Code, as amended.[43] Nonetheless, in light of

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[40] *Rollo*, p. 25.

[41] *People v. Capillas, et al.,* 195 Phil. 64, 79, 80 (1981), *People v. Ang*, 223 Phil. 333, 340 (1985), *People v. Punzalan*, 280 Phil. 390, 410 (1991).

[42] REVISED PENAL CODE, Art. 294 (1).

[43] Art. 63. Rules for the Application of Indivisible Penalties. — In all cases in which the law prescribes a single indivisible penalty, it shall be applied

R.A. No. 9346,[44] the penalty shall be reduced from death to *reclusion perpetua* without eligibility for parole.

Applying the adjusted amounts for damages laid down in the recently decided case of *People v. Jugueta*,[45] We modify the damages awarded by the trial and appellate courts. Accused-appellant shall be liable to the heirs of the deceased for civil indemnity in the amount of ₱100,000.00, as the imposable penalty would have been death, were it not for the enactment of R.A. No. 9346. Accused-appellant shall also be liable for moral damages in the amount of ₱100,000.00 and exemplary damages in the amount of ₱100,000.00.

In awarding actual damages amounting to ₱172,000.00, the RTC erroneously included amounts stated in handwritten lists of expenses,[46] which were self-serving. A receipt dated months

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by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

[44] An Act Prohibiting the Imposition of Death Penalty in the Philippines.

[45] G.R. No. 202124, April 5, 2016.

[46] Records, pp. 300-304, 306-307; Exhibits "K-1" to "K-4".

after the death of the victim[47] was also erroneously included in the computation of actual damages awarded by the trial court. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed.[48] Only substantiated expenses and those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts.[49] This Court has repeatedly held that self-serving statements of account are not sufficient basis for an award of actual damages. To justify an award of actual damages, it is necessary for the claimant to produce competent proof and the best evidence obtainable. Verily, "a list of expenses cannot replace receipts when the latter should have been issued as a matter of course in business transactions."[50] The CA, on the other hand, erroneously excluded in the computation for actual damages the amount stated in an unofficial receipt[51] issued by George & Elvie Store. The said tape receipt issued by the store, though unofficial because of the absence of a TIN number, contained material particulars such as the date of the transaction, the place of transaction, the items purchased, and the cost of items purchased. To the mind of this Court, the same constitutes competent proof. The heirs of the victims, as claimants, should not be prejudiced by the store's failure to issue official receipts.

All in all, an examination of the records reveals that the following competent proofs of expenses incurred in connection with the death, wake and burial of the victim were submitted:

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|---|---|
| Official Receipt dated March 30, 2003, issued by Kairiz Funeral Service (Exhibit I) | ₱45,000.00 |

[47] *Id.* at 305; Exhibit "K-5".

[48] *People v. Salibad*, G.R. No. 210616, November 25, 2015.

[49] *People v. Jamiro*, 344 Phil. 700, 722 (1997).

[50] *People v. Mamaruncas, et al.*, 680 Phil. 192, 213-214 (2012); citing *People v. Guillera, et al.,* 601 Phil. 155, 166 (2009).

[51] Records, p. 309.

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|---|---|
| Official Receipt dated April 01, 2003, issued by Our Lady of Light Parish (Exhibit J) | ₱27,000.00 |
| Official Receipt dated April 06, 2003, issued by Pilipinas Makro, Inc. (Exhibit K) | ₱2,842.05 |
| Official Receipt dated April 9, 2003, issued by Ever Shoppers, Inc. Supermarket[52] | ₱1,029.25 |
| Receipt dated March 28, 2003, issued by George & Elvie Stores[53] | ₱89.00 |
| TOTAL | ₱75,960.30 |

Based on the foregoing, accused-appellant shall be liable to the heirs of the victim for the amount of ₱75,960.30 as actual damages.

Lastly, the heirs of the victim are likewise entitled to indemnity for loss of earning capacity[54] amounting to ₱2,519,405.86. Such indemnification partakes of the nature of actual damages and thus, must be duly proven by competent proof.[55] Estella, wife of the victim, testified on the income of her husband and presented documentary evidence to show that her husband was gainfully employed at the time of his death. A Certification dated July 03, 2006[56] issued by Mitsubishi Motors Philippines Corporation was presented to prove that the victim was employed in the said company as a regular sealing man with a salary rate of ₱80.33/hour. Pursuant to jurisprudence,[57] such certification shall be considered as sufficient basis for a fair and reasonable computation of the victim's loss of earning capacity. Loss of earning capacity is computed as follows:

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[52] *Id.* at 308.

[53] *Supra* note 51.

[54] CIVIL CODE, Art. 2206.

[55] *Da Jose, et al. v. Angeles, et al.*, 720 Phil. 451, 463 (2013).

[56] Records, p. 294; Exhibit "G".

[57] *People v. Lopez,* 658 Phil. 647, 651 (2011).

Net Earning Capacity = Life expectancy x [Gross Annual Income - Living Expenses]

= [2/3 (80 - age at death)] x [GAI - 50% of GAI]
= [2/3 (80 - 31[58])] x [₱154,233.60[59] - ₱77,116.80]
= [2/3 (49)] x ₱77,116.80
= 32.67 x ₱77,116.80
= ₱2,519,405.86

**WHEREFORE,** the decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 05040 dated July 26, 2012 is hereby **AFFIRMED WITH MODIFICATION**. Accused-appellant Ardo Bacero *y* Casabon is found **GUILTY** beyond reasonable doubt of Robbery with Homicide and sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole and ordered to pay the heirs of Virgilio M. San Juan, Jr. the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, ₱75,960.30 as actual damages, and ₱2,519,405.86 as indemnity for loss of earning capacity. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

**SO ORDERED.**

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

*Mendoza,*[*] *J.,* on wellness leave.

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[58] Records, p. 310.

[59] *Supra* note 56; the hourly salary rate of ₱80.33/hour was multiplied by 8 working hours in a day. The product of ₱642.64 was multiplied by 20 working days in a month, yielding a monthly salary rate of ₱12,852.80. The monthly rate was then multiplied by 12 working months to arrive at a gross annual income of ₱154,233.60.

[*] Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated July 4, 2016.

**THIRD DIVISION**

[G.R. No. 208837. July 20, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **DONNA RIVERA *y* DUMO,** *accused-appellant.*

**SYLLABUS**

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF TRIAL COURTS ESPECIALLY THOSE WHICH REVOLVE ON MATTERS OF CREDIBILITY OF WITNESSES DESERVE TO BE RESPECTED WHEN NO GLARING ERRORS BORDERING ON A GROSS MISAPPREHENSION OF THE FACTS, OR WHERE NO SPECULATIVE, ARBITRARY AND UNSUPPORTED CONCLUSIONS, CAN BE GLEANED FROM SUCH FINDINGS.—** [W]e once more pronounce that factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings. The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination.

2. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE AND POSSESSION OF A DANGEROUS DRUG; ELEMENTS; ESTABLISHED.—** In every prosecution for illegal sale of *shabu*, the following elements must be sufficiently 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 [T]o prove the complicity of the accused to illegal possession of a dangerous drug, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the

drug. The prosecution has duly established all the elements of the two crimes charged.

3. **ID.; ID.; ID.; THE DELIVERY OF THE ILLICIT DRUG TO THE POSEUR BUYER AND THE RECEIPT BY THE SELLER OF THE MARKED MONEY SUCCESSFULLY CONSUMMATED THE BUY-BUST TRANSACTION.—** As culled from testimonies of prosecution witnesses, the PDEA officers caught appellant *in flagrante delicto* selling *shabu* to a PDEA officer. The delivery of the illicit drug to the poseur buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. After her arrest, she was frisked and eight (8) plastic sachets of *shabu* were recovered in her possession. The result of the laboratory examination confirmed the presence of methamphetamine hydrochloride on the white crystalline substance inside the plastic sachets confiscated from appellant. This was further corroborated by the presentation of the marked money in evidence.

4. **ID.; ID.; ID.; THE DEFENSE OF FRAME-UP OR DENIAL IN DRUG CASES REQUIRES STRONG AND CONVINCING EVIDENCE BECAUSE OF THE PRESUMPTION THAT THE LAW ENFORCEMENT AGENCIES ACTED IN THE REGULAR PERFORMANCE OF THEIR OFFICIAL DUTIES, AND THE BARE DENIALS OF APPELLANT CANNOT PREVAIL OVER THE POSITIVE TESTIMONIES OF THE POLICE OFFICERS.—** Denial or frame-up, like alibi, has been viewed by the court with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act. The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Bare denials of appellant cannot prevail over the positive testimonies of the three police officers. Moreover, there is no evidence of any improper motive on the part of the PDEA officers who conducted the buy-bust operation to falsely testify against appellant.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ARREST WITHOUT A WARRANT; WHEN AN ACCUSED IS APPREHENDED *IN FLAGRANTE DELICTO* AS A RESULT OF A BUY-BUST OPERATION, THE POLICE ARE NOT ONLY AUTHORIZED BUT DUTY-BOUND TO**

**ARREST HIM EVEN WITHOUT A WARRANT.—** Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure provides instances when warrantless arrest may be affected x x x. Under Section 5(a) of the above-quoted provision, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense." Appellant was caught in the act of committing an offense. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.

6. **ID.; ID.; ID.; ID.; AN ARREST MADE AFTER AN ENTRAPMENT OPERATION DOES NOT REQUIRE A WARRANT AS IT IS CONSIDERED A VALID WARRANTLESS ARREST.—** In *People v. Agulay*, the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. The Court proceeded to state that: A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.

7. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; PROPER PENALTY.—** Appellant was caught in possession of 0.1649 gram of *shabu*. The illegal possession of dangerous drugs is punished under Section 11, paragraph 2(1), Article II of R.A. No. 9165 as follows: x x x (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "*shabu*" is ten (10) grams or more but less than fifty (50) grams.

8. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUGS; PROPER PENALTY.—** [S]elling of *shabu*, regardless of quantity, is punishable by life imprisonment under Section 5, paragraph 1 of the same law, *viz.*: **Section 5.** *Sale, Trading, Administration,*

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

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## R E S O L U T I O N

**PEREZ, *J.*:**

Before this Court is an appeal from the 16 May 2013 Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 05117, which affirmed the 29 June 2011 Decision[2] of the Regional Trial Court (RTC) of Agoo, La Union, Branch 32, finding appellant Donna Rivera *y* Dumo guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II, Republic Act (R.A.) No. 9165.

The case stemmed from two Informations charging appellant with illegal sale and possession of methamphetamine hydrochloride or *shabu*, the accusatory portions of which read as follows:

Criminal Case No. A-5711 (Possession)

That on or about the 26th day of January 2009, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there

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[1] *Rollo*, pp. 2-22; Penned by Associate Justice Stephen C. Cruz with Associate Justices Normandie Pizarro and Myra V. Garcia-Fernandez concurring.

[2] Records (Crim. Case No. A-5711), pp. 281-287; Presided by Presiding Judge Jennifer A. Pilar.

willfully, unlawfully and feloniously have in (her) possession, control and custody three (3) pieces plastic sachet marked as:

(1) "B1 JJC" containing methamphetamine hydrochloride, a dangerous drug, weighing zero point zero five hundred thirty 0.0530 gram;
(2) "B2 JJC" containing methamphetamine hydrochloride, a dangerous drug, weighing zero point zero five hundred sixty five 0.0565 gram;
(3) "B3 JJC" containing methamphetamine hydrochloride, a dangerous drug, weighing zero point zero five hundred fifty four 0.0554 gram;

without first securing the necessary permit, license or prescription from the proper government agency or authority.[3]

Criminal Case No. A-5713 (Sale)

That on or about the 26th day of January 2009, in the Municipality of Agoo, Province of La Union, Philippines and within the jurisdiction of [this] Honorable Court, the above-named accused, for and in consideration of the sum of ₱500.00 did then and there willfully, unlawfully and feloniously, sell and deliver one (1) plastic sachet containing ZERO POINT ZERO FOUR HUNDRED EIGHTY FOUR (0.0484) gram of methamphetamine hydrochloride, a dangerous drug, to IO1 JAIME J. CLAVE, JR., who posed as buyer thereof using marked money, ONE (1) piece of TWO hundred peso bill bearing serial No. DQ540638; TWO (2) pcs. of ONE HUNDRED PESOS bill bearing serial nos. of EQ913638 and JM093792 respectively and FIVE (5) PCS. TWENTY PESOS bill bearing serial nos. of W783296; SC613989; V500855; W637658 and ZG282032 respectively without the necessary authority or permit from the proper government authorities.[4]

Upon arraignment, appellant pleaded not guilty to both charges.

Trial on the merits ensued.

Acting on a tip from an informant, that appellant was selling drugs in San Nicolas Central, Agoo, La Union and upon confirmation with the Intelligence Division of the Philippine

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[3] *Id.* at 1.

[4] Records (Crim. Case No. A-5712), p. 1.

Drug Enforcement Agency (PDEA) Regional Office in San Fernando City, La Union, Police Officer 3 Roy Arce Abang (PO3 Abang) formed a buy-bust team on 26 January 2009 composed of Intelligence Officer 2 Jaime Clave (IO2 Clave) as poseur buyer and Lanibelle Ancheta (Ancheta), as immediate back-up. Intelligence Officers Rosario Vicente (Vicente), Jojo Cayuma (Cayuma), Ricky Ramos (Ramos) and IO2 Natividad also joined the operation.[5]

IO2 Clave was given five (5) pieces of ₱20.00 bill, one (1) piece of ₱200.00 bill and two (2) pieces of ₱100.00 bill to be used as buy-bust money.[6] The team proceeded to the target area, IO2 Clave and the informant approached appellant, who was then seated on a bamboo bench. The informant introduced IO2 Clave to appellant as the one who wanted to buy *shabu* worth ₱500.00. IO2 Clave then gave appellant the marked bills. Appellant, in turn, took out an elongated plastic sachet from her pocket and handed it to IO2 Clave. Upon inspection of the sachet, IO2 Clave sent his pre-arranged signal to the other PDEA officers by wearing his sunglasses on top of his head. Ancheta then rushed to IO2 Clave's side and introduced themselves as PDEA officers. Appellant was arrested and subjected to a body search. Three (3) more elongated plastic sachets and four (4) small plastic sachets of suspected *shabu* were recovered from her. The confiscated items were marked and inventoried by IO2 Clave in the presence of the *barangay* officials, a representative from the media and other witnesses.[7] IO2 Clave brought them to the PNP Crime Laboratory for examination.[8] Chemistry Report No. D-007-09 contains the following findings:

SPECIMEN SUBMITTED:

A- Four (4) small heat-sealed transparent plastic sachets containing white crystalline substance with the following markings and recorded net weights:

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[5] TSN, 10 August 2009, pp. 4-8.

[6] *Id.* at 9.

[7] *Id.* at 14-23.

[8] TSN, 17 August 2009, p. 8.

A1 (A1 "JJC" with date and time) = 0.0484 gram
A2 (B1 "JJC" with date and time) = 0.0530 gram
A3 (B2 "JJC" with date and time) = 0.0565 gram
A4 (B3 "JJC" with date and time) = 0.0554 gram

B- Four (4) small heat-sealed transparent plastic sachets containing white crystalline residue with markings "C1 to C4" and "JJC".

x x x x x x x x x

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs. x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for the presence of Methamphetamine Hydrochloride, a dangerous drug. x x x[9]

In her defense, appellant presented a different version of the incident. She narrated that on 26 January 2009 at around 4:00 p.m., she was waiting for her grandmother on a bench located outside the latter's house when five armed men approached her and asked if she was "Donna Rivera." Appellant confirmed her identity. She was thereafter frisked. She and her live-in partner were arrested and brought to the PDEA office. Her live-in partner was later released while she was detained. She further claimed that during the investigation, she was not accompanied by counsel.[10]

On 29 June 2011, the RTC rendered a Decision finding appellant guilty of sale and illegal possession of *shabu*, the dispositive portion of which reads:

**WHEREFORE,** judgment is hereby rendered, to wit:

1. In Criminal Case No. A-5711, the [c]ourt finds accused Donna Rivera *y* Dumo **guilty** beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165, and hereby

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[9] Records (Crim. Case No. A-5711), p. 17.

[10] TSN, 6 June 2011, pp. 4-17.

sentences her to suffer the indeterminate penalty of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum, and to pay a fine of three hundred thousand pesos (₱300,000.00).

2. In Criminal Case No. A-5712, the [c]ourt finds accused Donna Rivera *y* Dum **guilty** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, and hereby sentences her to suffer the penalty of life imprisonment, and to pay a fine of five hundred thousand pesos (₱500,000.00)

The Branch Clerk of Court is directed to transmit the eight (8) plastic sachets subject matter of these cases to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.[11]

On 16 May 2013, the Court of Appeals affirmed the judgment of the RTC. The appellate court held that the prosecution was able to prove beyond reasonable doubt that the three (3) elongated and four (4) smaller sachets, all containing *shabu*, were seized from appellant's possession. Furthermore, the appellate court found that a consummated sale of *shabu* transpired between IO2 Clave and appellant. The appellate court gave full credit to the testimony of the PDEA officers relative to the presence of all the elements for illegal possession and illegal sale of *shabu*.

Appellant appealed her conviction before this Court, adopting the same arguments in her Brief[12] before the Court of Appeals.

Appellant contends that the PDEA officers had sufficient time to secure a warrant of arrest but failed to do so. Appellant asserts that a buy-bust operation should not be used to dispense with the requirement of a warrant. Appellant insists that she was merely sitting on a bench and waiting for her grandmother when the PDEA officers came and apprehended her. Moreover, appellant argues that the items allegedly seized from her are not admissible in evidence because they were a product of an invalid warrantless arrest.

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[11] Records (Crim. Case No. A-5711), p. 287.

[12] CA *rollo*, pp. 39-47.

With these antecedents, we once more pronounce that factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings. The evaluation of the credibility of witnesses and their testimonies are best undertaken by the trial court because of its unique opportunity to observe the witnesses' deportment, demeanor, conduct and attitude under grilling examination.[13]

After a painstaking review of the records, we agree with the trial court's finding that the guilt of the appellant was established beyond reasonable doubt.

In every prosecution for illegal sale of *shabu*, the following elements must be sufficiently 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.[14]

On the other hand, to prove the complicity of the accused to illegal possession of a dangerous drug, there must be proof that (1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug.[15]

The prosecution has duly established all the elements of the two crimes charged. As culled from testimonies of prosecution witnesses, the PDEA officers caught appellant *in flagrante delicto* selling *shabu* to a PDEA officer. The delivery of the illicit drug to the poseur buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. After her arrest, she was frisked and eight (8) plastic sachets of *shabu* were recovered in her possession.

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[13] *People v. Bayan*, G.R. No. 200987, 20 August 2014, 733 SCRA 577, 587.

[14] *People v. Cerdon*, G.R. No. 201111, 6 August 2014, 732 SCRA 335, 342.

[15] *Valleno v. People*, 701 Phil. 313, 322 (2013).

The result of the laboratory examination confirmed the presence of methamphetamine hydrochloride on the white crystalline substance inside the plastic sachets confiscated from appellant. This was further corroborated by the presentation of the marked money in evidence.

Denial or frame-up, like alibi, has been viewed by the court with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[16] The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.[17] Bare denials of appellant cannot prevail over the positive testimonies of the three police officers. Moreover, there is no evidence of any improper motive on the part of the PDEA officers who conducted the buy-bust operation to falsely testify against appellant.

Appellant questions the propriety of the buy-bust when a warrant of arrest should have been secured.

Section 5 of Rule 113 of the 1985 Rules on Criminal Procedure provides instances when warrantless arrest may be affected, to wit:

Sec. 5. *Arrest without warrant; when lawful.* —

A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

(b) When an offense has in fact just been committed, and he has personal knowledge of facts indicating that the person to be arrested has committed it; and

(c) When the person to be arrested is a prisoner who escaped from a penal establishment or place where he is serving final judgment

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[16] *People v. Tapugay*, G.R. No. 200336, 11 February 2015.

[17] *People v. Steve*, G.R. No. 204911, 6 August 2014, 732 SCRA 385, 400.

or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

Under Section 5(a) of the above-quoted provision, a person may be arrested without a warrant if he "has committed, is actually committing, or is attempting to commit an offense." Appellant was caught in the act of committing an offense. When an accused is apprehended *in flagrante delicto* as a result of a buy-bust operation, the police are not only authorized but duty-bound to arrest him even without a warrant.

In *People v. Agulay*,[18] the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. The Court proceeded to state that:

> A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[19]

Appellant was caught in possession of 0.1649 gram of *shabu*. The illegal possession of dangerous drugs is punished under Section 11, paragraph 2(1), Article II of R.A. No. 9165 as follows:

> x x x x x x x x x
>
> (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (₱400,000.00) to Five hundred thousand pesos (₱500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
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> x x x x x x x x x

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[18] 588 Phil. 247 (2008).

[19] *Id.* at 727 citing *People v. Valencia*, 439 Phil. 561, 574 (2002) and *People v. Abbu*, 317 Phil. 518, 525 (1995).

On the other hand, selling of *shabu*, regardless of quantity, is punishable by life imprisonment under Section 5, paragraph 1 of the same law, *viz*:

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

Accordingly, we sustain the penalty imposed by the RTC, as affirmed by the Court of Appeals, as it is within the range provided for by law.

**WHEREFORE,** the Decision dated 16 May 2013 of the Court of Appeals in CA-G.R. CR-H.C. No. 05117 affirming the conviction of appellant Donna Rivera *y* Dumo by the Regional Trial Court, Agoo, La Union, Branch 32, for violation of Sections 5 and 11, Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

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[*] Additional Member per Raffle dated 13 June 2016.

**THIRD DIVISION**

[G.R. No. 217381. July 20, 2016]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **VICENTE R. SALVADOR,** *accused-appellant.*

**SYLLABUS**

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ELEMENTS.—** The crime of rape is defined under Article 266-A of the RPC x x x. Under Article 266-B of the RPC, the felony of rape is qualified when the victim is under 18 years of age and the offender is a parent, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. "The elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority."

2. **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, EXCEPT WHEN THE TRIAL COURT OVERLOOKED MATERIAL AND RELEVANT MATTERS, THAT THE COURT WILL RE-CALIBRATE AND EVALUATE THE FACTUAL FINDINGS OF THE COURT BELOW.—** After a thorough perusal of the records of this case, the Court finds that the prosecution was able to establish beyond reasonable doubt that Salvador had carnal knowledge of AAA against her will through force and intimidation. AAA testified that Salvador succeeded in having carnal knowledge of her on December 13, 2003 by threatening her with an ice pick. Both the lower courts found AAA's

testimony in this matter clear, convincing and credible. AAA even testified that she was raped by Salvador several times before the incident, which resulted in her pregnancy. It is well-settled that, in a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below. The Court sees no reason to depart from the foregoing rule.

3. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH, AS IT IS HIGHLY IMPROBABLE THAT A 13-YEAR-OLD GIRL WOULD IMPUTE A CRIME AS SERIOUS AS RAPE TO THE COMMON-LAW SPOUSE OF HER MOTHER, UNDERGO THE HUMILIATION OF 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.—** [I]t is highly unlikely that AAA would concoct her accusations against Salvador and publicly expose her dishonor and shame if it were not really true that she was raped. Courts give full weight and credence to testimonies of child-victims of rape. Youth and immaturity are generally badges of truth. It is highly improbable that a 13-year-old girl like AAA would impute a crime as serious as rape to the common-law spouse of her mother, undergo the humiliation of 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. The weight of such testimony may be countered by physical evidence to the contrary or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.

4. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; ACCUSED IS GUILTY ONLY OF SIMPLE RAPE WHERE THE AGE OF THE VICTIM, AND THE RELATIONSHIP OF THE VICTIM TO THE OFFENDER IS NOT**

**SPECIFICALLY ALLEGED IN THE INFORMATION AND ESTABLISHED DURING THE TRIAL.—** [T]here is a need to modify the lower courts' designation of the crime committed by Salvador and the penalty imposed upon him. x x x. [T]here is a need to specifically allege in the information (1) the age of the victim, and (2) the relationship of the victim to the offender. The information in this case alleged that AAA was a "thirteen (13) year-old-virgin." AAA's age at the time of the incident was sufficiently alleged in the information and established during the trial. The information likewise alleged that AAA is Salvador's "step-daughter, living with him in the same house." However, a perusal of the records shows that Salvador is only the common-law husband of BBB. No evidence was adduced that BBB and Salvador legally married after the former separated from CCC. The information failed to allege that BBB and Salvador are common-law spouses. Salvador's being the common-law husband of BBB at the time of the commission of rape, even if established during the trial, could not be appreciated since the information did not specifically allege it as a qualifying circumstance. Otherwise, Salvador would be deprived of his right to be informed of the charge lodged against him. Accordingly, Salvador is only guilty of simple rape, which is punishable by *reclusion perpetua*.

5. **ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT. —** Considering that Salvador is only liable for simple rape, there is a need to modify the monetary awards granted to AAA. It is settled that the victim in simple rape is entitled to a civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00. 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**

*Office of the Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

## RESOLUTION

**REYES, *J*.:**

On appeal[1] is the Decision[2] dated September 11, 2014 of the Court of Appeals (CA) in CA-G.R. CR. H.C. No. 05484. The CA affirmed with modifications the Decision[3] dated September 26, 2011 of the Regional Trial Court (RTC) of Calapan City, Oriental Mindoro, Branch 40, in Criminal Case No. C-04-7691, finding Vicente R. Salvador (Salvador) guilty beyond reasonable doubt of the crime of Rape, as defined under Article 266-A of the Revised Penal Code (RPC), in relation to Republic Act (R.A.) No. 7610.[4]

### Facts

Salvador was charged with the crime of rape under Article 266-A of the RPC, in relation to R.A. No. 7610, in an Information, the accusatory portion of which reads:

> That sometime on the 13th day of December 2003, at Barangay Palhi, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, motivated by lust and lewd desire, and by means of force and intimidation, willfully, unlawfully and feloniously had carnal knowledge of one [AAA],[5] his thirteen (13) year old-virgin step daughter, living with him in

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[1] Under Section 13(c), Rule 124 of the Rules of Court, as amended.

[2] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Carmelita S. Manahan concurring; CA *rollo*, pp. 133-146.

[3] Issued by Judge Tomas C. Leynes; *id.* at 41-49.

[4] Special Protection of Children Against Abuse, Exploitation and Discrimination Act. Approved on June 17, 1992.

[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family or household members, 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.

the same house, against her will and without her consent, acts of child abuse which debase, degrade and demean the intrinsic worth and dignity of said [AAA], as a human being, to her damage and prejudice.[6]

Upon arraignment, Salvador entered a plea of not guilty. After pre-trial conference, trial on the merits ensued.[7]

The prosecution alleged the following:

AAA was born on December 17, 1991 to BBB and CCC. When her parents got separated, AAA chose to live with her mother BBB in Oriental Mindoro. Eventually, BBB cohabited with Salvador whom AAA looked up to as his father.[8]

On December 13, 2003, while AAA was alone in their house, Salvador poked an ice pick in AAA's belly and told her not to make any noise. Salvador then ordered AAA to lie down. AAA resisted but was overpowered by Salvador. Salvador then removed AAA's underwear, placed himself on top of AAA, and inserted his penis inside AAA's vagina. After having carnal knowledge of AAA, Salvador stood up, warned her against informing anyone of what he did, and went outside.[9]

AAA was pregnant at the time of the incident. Prior to December 13, 2003, Salvador had raped her several times. Two days after the incident, AAA gave birth to a boy. BBB was aware of her daughter's pregnancy, but she failed to do anything since she was afraid of Salvador. BBB only came home after AAA has given birth since she was harvesting *palay* in another town for about two weeks.[10]

BBB had previously noticed that AAA's belly was already bulging; when BBB tried to talk to AAA about it, the latter

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[6] CA *rollo*, p. 41.

[7] *Id.*

[8] *Id.* at 134.

[9] *Id.* at 134-135.

[10] *Id.* at 135.

would only cry. BBB testified that sometime in December 2003, AAA told her that Salvador had previously raped her. BBB then tried to take AAA away from Salvador, but failed to do so since the latter was always on guard and they were afraid of him.[11]

On January 27, 2004, Dr. Angelita C. Legaspi conducted a physical and cervico-vaginal examination of AAA upon request by police officers. She confirmed that AAA had sustained old-healed vaginal lacerations, which could have been caused by the delivery of a baby or by sexual intercourse. She likewise opined that it is possible for a woman to have been raped two days before she delivers or engage in sexual intercourse even if she is nine months pregnant.[12]

For his part, Salvador denied the allegations against him, and claimed that both AAA and BBB are his wives. He alleged that he is a member of the Tadyawan Tribe of Mangyan Cultural Minority which has a norm that allows a male to have two spouses as long as he can provide for them. He further averred that in their tribe, any person who is around 12 to 13 years old are allowed to get married or have common law spouses.[13]

Salvador further alleged that AAA loved him and voluntarily had sexual intercourse with him. He insinuated that AAA only lodged a complaint against him because her biological father was mad at him.[14]

**Ruling of the RTC**

On September 26, 2011, the RTC rendered its Decision,[15] finding Salvador guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 1 of the RPC, in relation to R.A. No. 7610, and sentenced him to suffer the penalty of *reclusion perpetua*. The RTC further directed Salvador to pay

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[11] *Id.*

[12] *Id.* at 135-136.

[13] *Id.* at 136.

[14] *Id.* at 136-137.

[15] *Id.* at 41-49.

AAA the following amounts: (1) ₱75,000.00 as civil indemnity; (2) ₱50,000.00 as moral damages; and (3) ₱50,000.00 as exemplary damages.[16]

The RTC gave more credence to AAA's testimony, finding the same straightforward and candid.[17] The RTC disregarded Salvador's claim that AAA is also his wife. The RTC pointed out that Salvador, other than his self-serving allegations, failed to adduce any evidence to support his defense. The RTC averred that Salvador's sweetheart defense cannot be given credence in the absence of corroborative proof that such romantic relationship existed.[18]

**Ruling of the CA**

On appeal, the CA, in its Decision[19] dated September 11, 2014, affirmed the RTC Decision dated September 26, 2011 albeit with modifications. The CA clarified that Salvador is guilty of the crime of qualified rape, which is punishable by death. The CA explained that the Information alleged that AAA, at the time of the incident, was only 13 years old and Salvador is her step-parent. Accordingly, the CA, pursuant to R.A. No. 9346[20] ruled that Salvador was aptly meted the penalty of *reclusion perpetua*, but added that he is not eligible for parole.[21]

The CA further increased the award of moral damages from ₱50,000.00 to ₱75,000.00, but reduced the award of exemplary damages from ₱50,000.00 to ₱30,000.00. Moreover, the CA imposed interest on all monetary awards at the rate of six percent (6%) *per annum* from the date of finality of the judgment until fully paid.[22]

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[16] *Id.* at 49.

[17] *Id.*

[18] *Id.* at 48.

[19] *Id.* at 133-146.

[20] AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES. Approved on June 24, 2006.

[21] CA *rollo*, pp. 144-145.

[22] *Id.*

Hence, this appeal.

Both Salvador and the Office of the Solicitor General manifested that they would no longer file with the Court supplemental briefs, and adopted instead their respective briefs with the CA.[23]

**Issue**

Essentially, the issue for the Court's resolution is whether Salvador is guilty beyond reasonable doubt of the crime charged.

**Ruling of the Court**

The appeal is dismissed for lack of merit, but the lower courts' designation of the crime and penalty imposed are modified.

The crime of rape is defined under Article 266-A of the RPC, which pertinently states that:

Art. 266-A. *Rape: When and How Committed*. — Rape is committed:

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

a. Through force, threat, or intimidation;

b. When the offended party is deprived of reason or otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; and

d. When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Under Article 266-B of the RPC, the felony of rape is qualified when the victim is under 18 years of age and the offender is a parent, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

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[23] *Id.* at 26-27; 30-32.

"The elements of the offense charged are that: (a) the victim is a female over 12 years but under 18 years of age; (b) the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim; and (c) the offender has carnal knowledge of the victim either through force, threat or intimidation; or when she is deprived of reason or is otherwise unconscious; or by means of fraudulent machinations or grave abuse of authority."[24]

After a thorough perusal of the records of this case, the Court finds that the prosecution was able to establish beyond reasonable doubt that Salvador had carnal knowledge of AAA against her will through force and intimidation. AAA testified that Salvador succeeded in having carnal knowledge of her on December 13, 2003 by threatening her with an ice pick. Both the lower courts found AAA's testimony in this matter clear, convincing and credible. AAA even testified that she was raped by Salvador several times before the incident, which resulted in her pregnancy.

It is well-settled that, in a criminal case, factual findings of the trial court are generally accorded great weight and respect on appeal, especially when such findings are supported by substantial evidence on record. It is only in exceptional circumstances, such as when the trial court overlooked material and relevant matters, that this Court will re-calibrate and evaluate the factual findings of the court below.[25] The Court sees no reason to depart from the foregoing rule.

In an effort to avoid criminal liability, Salvador maintains that he and AAA are lovers; that both AAA and BBB are his wives and that this arrangement is allowed according to the norms of the Tadyawan Tribe of Mangyan Cultural Minority, of which he is a member.

The Court does not agree.

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[24] *People v. Arcillas*, 692 Phil. 40, 50 (2012).

[25] See *Seguritan v. People*, 632 Phil. 415 (2010).

Other than Salvador's testimony that AAA is also his wife, there is no other evidence which would support the said claim. It is but a mere unsubstantiated allegation and, hence, not worthy of credence. Further, as pointed out by the CA, Salvador admitted that he met AAA and BBB sometime in 1999, immediately took both of them as his wives and had sexual intercourse with them alternately. In 1999, AAA was barely 8 years old and would not be able to understand love, sex and sexuality at such a tender age.

In any case, it is highly unlikely that AAA would concoct her accusations against Salvador and publicly expose her dishonor and shame if it were not really true that she was raped. Courts give full weight and credence to testimonies of child-victims of rape. Youth and immaturity are generally badges of truth. It is highly improbable that a 13-year-old girl like AAA would impute a crime as serious as rape to the common-law spouse of her mother, undergo the humiliation of 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.[26] The weight of such testimony may be countered by physical evidence to the contrary or indubitable proof that the accused could not have committed the rape, but in the absence of such countervailing proof, the testimony shall be accorded utmost value.[27]

The foregoing notwithstanding, there is a need to modify the lower courts' designation of the crime committed by Salvador and the penalty imposed upon him.

In *People v. Arcillas*,[28] the Court explained that:

Rape is qualified and punished with death when committed by the victim's parent, ascendant, step-parent, guardian, or relative by consanguinity or affinity within the third civil degree, or by the common-law spouse of the victim's parent. However, an accused cannot be found guilty of qualified rape unless the information alleges

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[26] See *People v. Mangitngit*, 533 Phil. 837, 851 (2006).

[27] See *People v. Bon*, 536 Phil. 897, 915 (2006).

[28] 692 Phil. 40 (2012).

the circumstances of the victim's over 12 years but under 18 years of age and her relationship with him. The reason is that such circumstances alter the nature of the crime of rape and increase the penalty; hence, they are special qualifying circumstances. As such, both the age of the victim and her relationship with the offender must be specifically alleged in the information and proven beyond reasonable doubt during the trial; otherwise, the death penalty cannot be imposed.[29] (Citations omitted)

Accordingly, there is a need to specifically allege in the information (1) the age of the victim, and (2) the relationship of the victim to the offender. The information in this case alleged that AAA was a "thirteen (13) year-old-virgin." AAA's age at the time of the incident was sufficiently alleged in the information and established during the trial.

The information likewise alleged that AAA is Salvador's "step-daughter, living with him in the same house." However, a perusal of the records shows that Salvador is only the common-law husband of BBB. No evidence was adduced that BBB and Salvador legally married after the former separated from CCC. The information failed to allege that BBB and Salvador are common-law spouses.

Salvador's being the common-law husband of BBB at the time of the commission of rape, even if established during the trial, could not be appreciated since the information did not specifically allege it as a qualifying circumstance. Otherwise, Salvador would be deprived of his right to be informed of the charge lodged against him. Accordingly, Salvador is only guilty of simple rape, which is punishable by *reclusion perpetua*.

Considering that Salvador is only liable for simple rape, there is a need to modify the monetary awards granted to AAA. It is settled that the victim in simple rape is entitled to a civil indemnity of ₱75,000.00, moral damages of ₱75,000.00, and exemplary damages of ₱75,000.00.[30]

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[29] *Id.* at 52.

[30] *People of the Philippines v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

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.[31]

**WHEREFORE,** in consideration of the foregoing disquisitions, the appeal is **DISMISSED**. The Decision dated September 11, 2014 of the Court of Appeals in CA-G.R. CR. H.C. No. 05484 is hereby **AFFIRMED WITH MODIFICATIONS**. Accused-appellant Vicente R. Salvador is hereby found **GUILTY** beyond reasonable doubt of the crime of Simple Rape under Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is directed to pay the victim ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, all monetary awards for damages shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Resolution until fully satisfied.

**SO ORDERED.**

*Velasco, Jr. (Chairperson), Peralta, Bersamin,*[*] and *Perez, JJ.,* concur.

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[31] *People v. Veloso*, 703 Phil. 541, 556 (2013).

[*] Additional Member per Raffle dated May 13, 2015 *vice* Associate Justice Francis H. Jardeleza.

**FIRST DIVISION**

[G.R. No. 218665. July 20, 2016]

**JULIUS BAUTISTA, ARSENIO LARANANG, REYNALDO BALDEMOR, CARMELITA MANAYAN, NORMA FLORES, CONSUELO ESTIGOY, CARMELITA VALMONTE, SIMEON MARTIN, MAGDALENA GADIAN, JOSE GINNO DELA MERCED, JOVEN SILAN, JR., JULIO DIAZ, GIDEON ACOSTA, and WENCESLA BAUTISTA,** *petitioners, vs.* **LT. COL. BENITO DONIEGO, JR., LT. COL. ALFREDO PATARATA, and MAJOR GENERAL GREGORIO PIO CATAPANG,** *respondents.*

**SYLLABUS**

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW; REQUISITES IN ORDER FOR APPELLATE JURISDICTION TO ATTACH; TO PERFECT THE APPEAL, THE PARTY HAS TO FILE THE PETITION FOR REVIEW AND TO PAY THE DOCKET FEES WITHIN THE PRESCRIBED PERIOD.—** [F]or appellate jurisdiction to attach, the following requisites must be complied with: (*a*) the petitioner must have invoked the jurisdiction of the CA within the time for doing so; (*b*) he must have filed his petition for review within the reglementary period; (*c*) he must have paid the necessary docket fees; and (*d*) the other parties must have perfected their appeals in due time. In this regard, the Rules of Court require that in an appeal by way of a petition for review, the appeal is deemed perfected as to the petitioner upon the timely filing of the petition and the payment of docket and other lawful fees. To perfect the appeal, the party has to file the petition for review and to pay the docket fees within the prescribed period. The law and its intent are clear and unequivocal that the petition is perfected upon its filing and the payment of the docket fees. Consequently, without the petition, the CA cannot be said to have acquired jurisdiction over the case.

2. **ID.; ID.; ID.; ID.; ID.; THE APPELLATE JURISDICTION WILL NOT ATTACH WHERE THE PARTY FILES A MERE**

**MOTION FOR EXTENSION AND NOT A PETITION FOR REVIEW AND THERE WAS NO PAYMENT OF THE REQUIRED DOCKET FEES.—** [T]he appellate jurisdiction did not attach with the filing of J. Bautista's Motion for Extension. Notably, the pleading filed was a mere motion for extension and not a petition for review, and there was no payment of the required docket fees. Besides, J. Bautista filed the motion ostensibly on behalf of the rest of the petitioners in the courts *a quo* but records are bereft of evidence to show that they had authorized him to do so. The Court also notes that J. Bautista filed the motion after receipt *only* of the RTC's December 9, 2014 Decision, from which *all* of the petitioners (Bautista, *et al.*) seasonably filed their Motion for Reconsideration. Thus, in **CA-G.R. SP No. 139159-UDK**, the CA did not acquire appellate jurisdiction for two (2) reasons: *one*, it was merely a Motion for Extension and not a proper Petition for Review, and *two*, there was no payment of the required docket fees

3. **ID.; ID.; ID.; ID.; THE COURT OF APPEALS ACQUIRED APPELLATE JURISDICTION OVER THE CASE WHERE PARTIES HAVE DULY PERFECTED THEIR APPEAL UPON THE TIMELY FILING OF THEIR PETITION FOR REVIEW, TOGETHER WITH THE PAYMENT OF THE PRESCRIBED DOCKET AND OTHER LAWFUL FEES; REINSTATEMENT AND RE-DOCKET OF THE CASE, PROPER.—** However, the same does not hold true with respect to the Petition for Review subsequently filed by Bautista, *et al.*, which was originally docketed as **CA-G.R. No. 139764**. The said petition was filed together with the payment of docket and other lawful fees and assailed not only the December 9, 2014 Decision of the RTC, but also the March 10, 2015 Order denying their Motion for Reconsideration. Records show that Bautista, *et al.* filed their Petition for Review within the fifteen (15) day period after their receipt of the Order denying their Motion for Reconsideration. Clearly, therefore, the Petition for Review was properly filed, and the CA acquired appellate jurisdiction over the case. In view of the foregoing, the CA committed reversible error in merely noting without action the Petition for Review, as well as the subsequent pleadings that Bautista, *et al.* had filed. The Petition for Review initially docketed as **CA-G.R. No. 139764** was an entirely new and distinct pleading assailing the RTC's issuances and did not proceed from the Motion for Extension filed by J. Bautista,

which the CA had already ordered expunged from the records. As such, with the expunction of J. Bautista's Motion for Extension, the docket number previously assigned to it should not have been re-assigned to the properly and seasonably-filed Petition for Review. To note, the CA would not have designated the appropriate docket number to the Petition for Review had it not found the same to be in order. In fine, considering that Bautista, *et al.* had duly perfected their appeal upon the timely filing of their Petition for Review together with payment of the prescribed docket and other lawful fees, the CA had already acquired appellate jurisdiction over the case. Consequently, it is only proper that the CA reinstate and re-docket the same.

## APPEARANCES OF COUNSEL

*Paner Hosaka & Ypil* for petitioners.
*The Solicitor General* for respondents.

## D E C I S I O N

**PERLAS-BERNABE, *J.*:**

Assailed in this petition for review on *certiorari*[1] is the Resolution[2] dated June 16, 2015 rendered by the Court of Appeals (CA) in CA-G.R. SP No 139159-UDK noting without action: (*a*) the Petition for Review filed before it on March 31, 2015 with payment of docket fees on even date; (*b*) the Manifestation filed by herein respondents Lt. Col. Benito Doniego, Jr., Lt. Col. Alfredo Patarata, and Major General Gregorio Pio Catapang (respondents) before the Regional Trial Court of Palayan City, Branch 40 (RTC) copy furnished the CA by registered mail on April 6, 2015; (*c*) the Urgent Motion for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction filed by Julius Bautista (J. Bautista), Florentina Juan,[3]

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[1] *Rollo*, Vol. I, pp. 5-57.

[2] *Id.* at 64. Signed by Division Clerk of Court Tammy Ann C. Reyes-Mendillo.

[3] Represented by Arsenio Laranang.

Bienvinido Baldemor,[4] Carmelita Manayan, Rufino Flores,[5] Elizarde Estigoy,[6] Carmelita Valmonte, Gervacio Aregando,[7] Dalisay Gadian,[8] Jose Ginno Dela Merced, Florentina Silan,[9] Julio Diaz, Gideon Acosta, and Wencesla Bautista (Bautista, *et al.*) on May 21, 2015; and (*d*) Bautista, *et al.*'s Omnibus Motion for Clarification and Resolution (Re: Assigned Docket Numbers) filed on May 27, 2015.

## The Facts

On June 24, 2013, Bautista, *et al.* filed a complaint[10] for forcible entry with prayer for the issuance of a TRO and award of damages before the Municipal Trial Court in Cities[11] of Palayan City (MTCC) against respondents. They alleged that beginning March 2013, respondents, with the help of soldiers from Fort Magsaysay, by means of stealth, strategy, force, threat, and intimidation, entered the parcels of land located at Fort Magsaysay, Palayan City (subject land) which they have been occupying in the concept of owner for more than ten (10) years.[12]

In defense, respondents denied[13] the allegations and claimed that it was Bautista, *et al.* who surreptitiously entered the subject land despite knowledge that it was part of the Fort Magsaysay Military Reservation since December 19, 1955 pursuant to Presidential Proclamation No. 237, s. 1955[14] of then President

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[4] Represented by Reynaldo Baldemor.

[5] Represented by Norma Flores.

[6] Represented by Consuelo Estigoy.

[7] Represented by Simeon Martin.

[8] Represented by Magdalena Gadian.

[9] Represented by Joven Silan, Jr.

[10] Docketed as Civil Case No. 640 dated June 21, 2013. *Rollo*, Vol. I, pp. 65-70.

[11] "Municipal Trial Court" in the complaint; see *id.* at 65.

[12] See *id.* at 66.

[13] See Answer with Counterclaim dated June 29, 2013; *id.* at 88-93.

[14] Entitled "RESERVING FOR MILITARY PURPOSES A PORTION OF THE PUBLIC DOMAIN SITUATED IN THE MUNICIPALITIES OF PAPAYA, STA. ROSA,

Ramon Magsaysay.[15] They also prayed for the award of moral and exemplary damages.[16]

**The MTCC Ruling**

After due proceedings, the MTCC rendered its Decision[17] dated October 8, 2013, directing the respondents and all persons acting on their behalf to vacate the subject land and to peacefully turn over the premises to Bautista, *et al*.[18] The MTCC ruled that Bautista, *et al.* were in prior possession of the subject land and that respondents had no right to enter the same without authority and consent of the lawful possessors. It found that the subject land had been segregated from the military reservation by virtue of Presidential Proclamation No. 1033, s. 2006[19] issued by then President Gloria Macapagal-Arroyo, which legally removed the administration and disposition of the subject land from them and transferred the same to the National Housing Authority.[20]

Dissatisfied, respondents, through the Office of the Solicitor General (OSG), appealed[21] to the RTC, docketed as Civil Case No. 0760-P-13.[22]

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AND LAUR, PROVINCE OF NUEVA ECIJA AND PORTION OF QUEZON PROVINCE, PHILIPPINES" dated December 19, 1955; *id.* at 94-95.

[15] *Id.* at 88-89.

[16] *Id.* at 92.

[17] *Id.* at 323-338. Penned by Presiding Judge Angel M. Merez, Jr.

[18] *Id.* at 338.

[19] Entitled "AMENDING PROCLAMATION NO. 237, SERIES OF 1955 BY EXCLUDING CERTAIN PORTION OF THE LAND EMBRACED THEREIN SITUATED IN THE MUNICIPALITIES OF GEN. TINIO, STA. ROSA, LAUR AND GABALDON AND THE CITY OF PALAYAN, PROVINCE OF NUEVA ECIJA AND THE MUNICIPALITY OF DINGALAN, PROVINCE OF AURORA, ISLAND OF LUZON RESERVING THE SAME FOR OFF-BASE HOUSING SITE AND DECLARING SAME OPEN FOR DISPOSITION TO QUALIFIED BENEFICIARIES" dated March 13, 2006; *id.* at 97-98.

[20] See *id.* at 335-337.

[21] See Notice of Appeal dated November 22, 2013; *id.* at 339-340.

[22] See *id.* at 407.

**The RTC Ruling and Subsequent Proceedings**

In a Decision[23] dated December 9, 2014, the RTC reversed and set aside the MTCC Decision. Finding respondents to be the lawful possessors of the subject land, it ordered Bautista, *et al.* to vacate and peacefully turn over the same to the former.[24] In so ruling, the RTC declared that Presidential Proclamation No. 1033, s. 2006 did not state, expressly or impliedly, that the Armed Forces of the Philippines (AFP) was to be dispossessed of the subject land and that the purpose thereof was merely changed from military reservation to off-base housing.[25]

On January 28, 2015, herein petitioner J. Bautista, ostensibly for and on behalf of his co-petitioners in the courts *a quo*, filed a Motion for Extension of Time to File a Petition for Review[26] (Motion for Extension) before the CA, copy furnished the RTC. In his motion, J. Bautista alleged that the RTC's Decision was received by Bautista, *et al.*'s counsel on January 16, 2015 and that they had until January 31, 2015 within which to file a petition for review. However, because of their counsel's illness, they prayed for an additional period of thirty (30) days to secure a new counsel and to file their petition for review.[27]

Subsequently, or on February 2, 2015, Bautista, *et al.* filed a Motion for Reconsideration[28] of the RTC's Decision.

Initially, the RTC, in an Order[29] dated February 9, 2015, deemed the said Motion for Reconsideration as abandoned in view of the filing of the Motion for Extension.[30]

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[23] *Id.* at 407-416. Penned by Presiding Judge Evelyn A. Atienza-Turla.

[24] *Id.* at 416.

[25] See *id.* at 415.

[26] *Id.* at 417-419.

[27] See *id.* at 417.

[28] Dated February 2, 2015. *Id.* at 420-425.

[29] *Id.* at 426.

[30] *Id.*

Subsequently, however, after having clarified that the Motion for Extension was filed *earlier* than the Motion for Reconsideration, the RTC issued an Order[31] dated February 24, 2015 declaring that the Motion for Reconsideration had superseded the Motion for Extension, which was deemed abandoned.[32]

Eventually, the RTC denied Bautista, *et al.*'s Motion for Reconsideration in an Order[33] dated March 10, 2015 for lack of merit.

In view of the RTC's reversal of the MTCC Decision, respondents filed a Motion for the Issuance of [a] Writ of Execution[34] to implement the RTC's December 9, 2014 Decision. In their comment/opposition,[35] Bautista, *et al.* contended that the immediate execution pending appeal of the judgment of the RTC in forcible entry and unlawful detainer cases is applicable only if the judgment is rendered *against* the defendants, *i.e.*, herein respondents, which does not obtain in this case, as the judgment was rendered against Bautista, *et al.*, as plaintiffs.[36]

In an Order[37] dated April 22, 2015, the RTC granted respondents' motion for the issuance of a writ of execution from which Bautista, *et al.* sought[38] reconsideration.

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[31] *Id.* at 434.

[32] *Id.*

[33] *Id.* at 435.

[34] Dated March 4, 2015. *Rollo*, Vol. II, pp. 857-859.

[35] See Comment/Opposition (to the Motion for Issuance of the Writ of Execution) dated March 20, 2015; *id.* at 860-862.

[36] See *id.* at 860-861.

[37] *Id.* at 872.

[38] See Omnibus Motion *Ad Abundante Cautelam* [(i) for Reconsideration of the Order dated April 22, 2015 and (ii) to Inhibit the Honorable Presiding Judge Evelyn Atienza-Turla from Taking Cognizance of the Case] dated May 7, 2015; *id.* at 873-881.

### The Proceedings before the CA

Meanwhile, in a Resolution[39] dated March 9, 2015, the CA acted on J. Bautista's Motion for Extension, docketed as **CA-G.R. SP No. 139159-UDK**, denying the same for failure to pay the required docket fees within the reglementary period without justifiable reason. Accordingly, it ordered the Motion for Extension expunged from the records.[40]

Subsequently, or on March 31, 2015, Bautista, *et al.* filed a Petition for Review[41] before the CA, with appropriate payment[42] of the prescribed docket fees, assailing the December 9, 2014 Decision of the RTC, as well as the March 10, 2015 Order denying the motion for reconsideration thereof. The petition was docketed as **CA-G.R. 139764**.[43] Later, or on May 21, 2015, Bautista, *et al.* filed an Urgent Motion for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[44] (Urgent Motion for Issuance of TRO) seeking to enjoin the enforcement of the RTC's April 22, 2015 Order directing the issuance of a writ of execution in favor of respondents.[45]

Finally, on May 27, 2015, Bautista, *et al*. filed an Omnibus Motion for Clarification and Resolution (Re: Assigned Docket Numbers),[46] seeking, *inter alia*, explanation from the CA on why their Petition for Review, which was docketed as **CA-G.R. 139764**, was given the docket number of J. Bautista's abandoned Motion for Extension, **CA-G.R. SP No. 139159**.

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[39] *Id.* at 854-855. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Mariflor P. Punzalan Castillo and Florito S. Macalino concurring.

[40] See *id.*

[41] Dated March 18, 2015; *id.* at 436-474.

[42] See *id.* at 852-853.

[43] *Id.* at 436.

[44] Dated May 19, 2015. *Rollo*, Vol. III, pp. 903-921.

[45] See *id.* at 917.

[46] Dated May 26, 2015. *Id.* at 950-957.

On June 16, 2015, the CA issued its assailed Resolution[47] merely ***noting without action***, *inter alia*: (a) Bautista, *et al*.'s Petition for Review with the payment of docket fees; (b) Bautista, *et al.*'s Urgent Motion for the Issuance of a TRO; and (c) Bautista, *et al*.'s Omnibus Motion for Clarification and Resolution (Re: Assigned Docket Numbers). The CA's action was in connection with its earlier Resolution dated March 9, 2015 denying J. Bautista's Motion for Extension and consequently, expunged the case from the records.[48]

Aggrieved, herein petitioners[49] elevated the matter before the Court *via* the instant petition.

**The Issue before the Court**

The issue to be resolved by the Court is whether or not the CA erred in merely *noting without action* Bautista, *et al.*'s Petition for Review and other subsequent pleadings, thus, denying them due course.

**The Court's Ruling**

The petition is partly meritorious.

Section 1, Rule 42[50] of the Rules of Court provides:

Section 1. *How appeal taken; time for filing*. — A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees,

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[47] *Rollo*, Vol. I, p. 64.

[48] See *id.*

[49] The petition before the Court was filed by Julius Bautista, Carmelita Manayan, Carmelita Valmonte, Jose Ginno Dela Merced, Julio Diaz, Gideon Acosta, Wencesla Bautista, and the representatives of the other petitioner in the courts *a quo*, *i.e.*, Arsenio Laranang, Reynaldo Baldemor, Norma Flores, Consuelo Estigoy, Simeon Martin, Magdalena Gadian, and Joven Silan, Jr.

[50] Petition for Review from the Regional Trial Courts to the Court of Appeals.

depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

Thus, for appellate jurisdiction to attach, the following requisites must be complied with: (*a*) the petitioner must have invoked the jurisdiction of the CA within the time for doing so; (*b*) he must have filed his petition for review within the reglementary period; (*c*) he must have paid the necessary docket fees; and (*d*) the other parties must have perfected their appeals in due time.[51] In this regard, the Rules of Court require that in an appeal by way of a petition for review, the appeal is deemed perfected as to the petitioner upon the timely filing of the petition and the payment of docket and other lawful fees.[52] To perfect the appeal, the party has to file the petition for review and to pay the docket fees within the prescribed period. The law and its intent are clear and unequivocal that the petition is perfected upon its filing and the payment of the docket fees.[53] Consequently, without the petition, the CA cannot be said to have acquired jurisdiction over the case.

Applying the foregoing parameters, the appellate jurisdiction did not attach with the filing of J. Bautista's Motion for Extension. Notably, the pleading filed was a mere motion for extension and not a petition for review, and there was no payment of the required docket fees. Besides, J. Bautista filed the motion

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[51] *Fernandez v. CA,* 497 Phil. 748, 756-757 (2005).

[52] *Id.* at 757, citing the Minutes of the meeting of the Rules of Court Revision Committee, September 18, 1991, p. 11.

[53] *Id.*

ostensibly on behalf of the rest of the petitioners in the courts *a quo* but records are bereft of evidence to show that they had authorized him to do so. The Court also notes that J. Bautista filed the motion after receipt *only* of the RTC's December 9, 2014 Decision, from which *all* of the petitioners (Bautista, *et al.*) seasonably filed their Motion for Reconsideration. Thus, in **CA-G.R. SP No. 139159-UDK**, the CA did not acquire appellate jurisdiction for two (2) reasons: *one*, it was merely a Motion for Extension and not a proper Petition for Review, and *two*, there was no payment of the required docket fees.

However, the same does not hold true with respect to the Petition for Review subsequently filed by Bautista, *et al.*, which was originally docketed as **CA-G.R. 139764**. The said petition was filed together with the payment of docket and other lawful fees and assailed not only the December 9, 2014 Decision of the RTC, but also the March 10, 2015 Order denying their Motion for Reconsideration. Records show that Bautista, *et al*. filed their Petition for Review within the fifteen (15) day period after their receipt of the Order denying their Motion for Reconsideration. Clearly, therefore, the Petition for Review was properly filed, and the CA acquired appellate jurisdiction over the case.

In view of the foregoing, the CA committed reversible error in merely noting without action the Petition for Review, as well as the subsequent pleadings that Bautista, *et al.* had filed. The Petition for Review initially docketed as **CA-G.R. 139764** was an entirely new and distinct pleading assailing the RTC's issuances and did not proceed from the Motion for Extension filed by J. Bautista, which the CA had already ordered expunged from the records. As such, with the expunction of J. Bautista's Motion for Extension, the docket number previously assigned to it should not have been re-assigned to the properly and seasonably-filed Petition for Review. To note, the CA would not have designated the appropriate docket number to the Petition for Review had it not found the same to be in order.

In fine, considering that Bautista, *et al.* had duly perfected their appeal upon the timely filing of their Petition for Review

together with payment of the prescribed docket and other lawful fees, the CA had already acquired appellate jurisdiction over the case. Consequently, it is only proper that the CA reinstate and re-docket the same.

**WHEREFORE,** the petition is **PARTLY GRANTED**. The Court of Appeals is directed to **REINSTATE** and **RE-DOCKET** the Petition for Review filed before it by Julius Bautista, Florentina Juan (Arsenio Laranang), Bienvinido Baldemor (Reynaldo Baldemor), Carmelita Manayan, Rufino Flores (Norma Flores), Elizarde Estigoy (Consuelo Estigoy), Carmelita Valmonte, Gervacio Aregando (Simeon Martin), Dalisay Gadian (Magdalena Gadian), Jose Ginno Dela Merced, Florentina Silan (Joven Silan, Jr.), Julio Diaz, Gideon Acosta, and Wencesla Bautista.

**SO ORDERED.**

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

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**ADMINISTRATIVE LAW**

*Misconduct* — Absent any evidence establishing corruption, bad faith or complicity, the petitioners cannot be held liable for grave misconduct or any other grave offense classified under the Civil Service Law. (Gacus *y* Amson *vs.* Castro, G.R. Nos. 194763-64, July 20, 2016) p. 667

— Defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer; it becomes grave if it involves any of the additional elements of corruption, such as willful intent to violate the law or to disregard established rules, which must be established by substantial evidence. (*Id.*)

— For grave misconduct to attach, it must be shown that the acts of the petitioners were tainted with corruption, clear intent to violate the law or flagrant disregard of an established rule, which must be proven by substantial evidence. (*Id.*)

— To be disciplined for grave misconduct or any grave offense, the evidence should be competent and must be derived from direct knowledge. (*Id.*)

*Neglect of duty* — Respondents' failure to comply with P.D. No. 1594 cannot be trivialized and classified as a mere oversight; it constitutes neglect of duty. (Gacus *y* Amson *vs.* Castro, G.R. Nos. 194763-64, July 20, 2016) p. 667

*Preventive suspension* — Before a government employee may be entitled to back salaries, two conditions must be met, to wit: a) the employee must be found innocent of the charges; and b) his suspension must be unjustified. (Gacus *y* Amson *vs.* Castro, G.R. Nos. 194763-64, July 20, 2016) p. 667

— The period when an employee was preventively suspended pending appeal shall be credited to form part of the penalty of suspension imposed; an employee is considered

to be on preventive suspension pending appeal while the administrative case is on appeal; such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal. (*Id.*)

**ALIBI**

*Defense of* — To prosper, the accused must prove not only that he was at some other place at the time the crime was committed but that it was likewise physically impossible for him to be at the *locus criminis* at the time of the alleged crime. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

**APPEALS**

*Appeal to the Court of Appeals under Rule 41* — Section 2, Rule 50 of the Rules of Court, clearly mandates the outright dismissal of appeals made under Rule 41 thereof, if they only raise pure questions of law. (Sps. Navarro *vs.* Rural Bank of Tarlac, Inc., G.R. No. 180060, July 13, 2016) p. 1

— The determination of whether an appeal involves only questions of law or of both law and fact is best left to the CA and that all doubts as to the correctness of its conclusions shall be resolved in its favor. (*Id.*)

*Concept* — An appeal is not a matter of right, but is one of sound judicial discretion; it may only be availed of in the manner provided by the law and the rules; a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law loses the right to do so as the decision, as to him, becomes final and binding. (Heirs of Albano *vs.* Sps. Ravanes, G.R. No. 183645, July 20, 2016) p. 557

*Factual findings of the National Labor Relations Commission* — Factual findings of quasi-judicial bodies like the NLRC, if supported by substantial evidence, are accorded respect and even finality by this Court, more so when they coincide with those of the Labor Arbiter; such factual findings

are given more weight when the same are affirmed by the Court of Appeals. (Celiz *vs.* Cord Chemicals, Inc., G.R. No. 200352, July 20, 2016) p. 715

*Factual findings of the trial courts* — 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. (People *vs.* Salvador, G.R. No. 217381, July 20, 2016) p. 782

*Perfection of appeal* — For appellate jurisdiction to attach, the following requisites must be complied with: (*a*) the petitioner must have invoked the jurisdiction of the CA within the time for doing so; (*b*) he must have filed his petition for review within the reglementary period; (*c*) he must have paid the necessary docket fees; and (*d*) the other parties must have perfected their appeals in due time; in an appeal by way of a petition for review, the appeal is deemed perfected as to the petitioner upon the timely filing of the petition and the payment of docket and other lawful fess. (Bautista *vs.* Lt. Col. Doniego, Jr., G.R. No. 218665, July 20, 2016) p. 794

— The appellate jurisdiction will not attach where the party files a mere motion for extension and not a petition for review and no payment of required docket fees. (*Id.*)

— The Court of Appeals acquired appellate jurisdiction over the case where parties have duly perfected their appeal upon the timely filing of their petition for review, together with the payment of the prescribed docket and other lawful fees; reinstatement and re-docket of the case, proper. (*Id.*)

*Petition for review on certiorari to the Supreme Court under Rule 45* — As a rule, the findings of fact of the Court of Appeals are final and conclusive and this Court will not review them on appeal; exceptions. (Georg *vs.* Holy Trinity College, Inc., G.R. No. 190408, July 20, 2016) p. 631

— Limited to reviewing only errors of law; factual questions are not the proper subject of an appeal by *certiorari*. (Fernandez *vs.* Sps. Ronulo, G.R. No. 187400, July 13, 2016) p. 42

— The Supreme Court is not a trier of facts and it is bound by the factual findings of the CA. (Heirs of Castillejos *vs.* La Tondeña Incorporada, G.R. No. 190158, July 20, 2016) p. 621

**ARREST**

*Warrantless arrest* — An arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid "warrantless arrest," in line with the provisions of Rule 113, Sec. 5(a) of the Revised Rules of Court; a buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers; in a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. (People *vs.* Rivera *y* Dumo, G.R. No. 208837, July 20, 2016) p. 770

**ATTORNEYS**

*Code of Professional Responsibility* — As a lawyer, the respondent was proscribed from engaging in unlawful, dishonest, immoral or deceitful conduct in her dealings with others, especially clients whom she should serve with competence and diligence. (Mercullo *vs.* Atty. Ramon, A.C. No. 11078, July 19, 2016) p. 267

*Lawyer's oath* — The Lawyer's Oath is a source of the obligations and duties of every lawyer; any violation of the oath may be punished with either disbarment or suspension from the practice of law, or other commensurate disciplinary action. (Mercullo *vs.* Atty. Ramon, A.C. No. 11078, July 19, 2016) p. 267

*Liability of* — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any

man's cause. (Tolentino *vs.* Atty. So, A.C. No. 6387[Formerly CBD Case No. 11-3001], July 19, 2016) p. 252

— Failure to heed court resolutions despite notice aggravates the misconduct of counsel. (*Id.*)

*Negligence in the performance of duties* — Government employed counsel handling appealed case who resigned four years before the Court of Appeals rendered its decision cannot be faulted for not elevating case to the Supreme Court. (Tolentino *vs.* Atty. So, A.C. No. 6387 [Formerly CBD Case No. 11-3001], July 19, 2016) p. 252

**BILL OF RIGHTS**

*Concept* — The Bill of Rights does not concern itself with relations between private individuals; the prohibitions therein are primarily addressed to the State and its agents. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

*Rights of the accused* — Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

— Court has disregarded allegations of torture when the accused did not file any complaint against his alleged malefactors for maltreatment. (*Id.*)

***CERTIORARI***

*Petition for* — Exercise of this power to correct grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government cannot be thwarted by rules of procedure to

the contrary or for the sake of the convenience of one side. (Macapagal-Arroyo *vs.* People, G.R. No. 220598, July 19, 2016) p. 367

— No grave abuse of discretion in filing the information after finding probable cause. (Napoles *vs.* Hon. Sec. De Lima, G.R. No. 213529, July 13, 2016) p. 161

— No grave abuse of discretion in the issuance of warrant of arrest where the judge personally evaluated the evidence and decided on the existence of probable cause. (*Id.*)

**CODE OF COMMERCE**

*Limited liability rule* — Limits the liability of the shipowner or agent to the value of the vessel, its appurtenances and freightage earned in the voyage, provided that the owner or agent abandons the vessel; when the vessel is totally lost, in which case abandonment is not required because there is no vessel to abandon, the liability of the shipowner or agent for damages is extinguished; it does not apply in cases: (1) where the injury or death to a passenger is due either to the fault of the shipowner, or to the concurring negligence of the shipowner and the captain; (2) where the vessel is insured; and (3) in workmen's compensation claims; limited liability rule found in the Code of Commerce is inapplicable in a liability created by statute to compensate employees and laborers, or the heirs and dependents, in cases of injury received by or inflicted upon them while engaged in the performance of their work or employment. (Phil-Nippon Kyoei, Corp. *vs*. Gudelosao, G.R. No. 181375, July 13, 2016) p. 16

**COLLECTIVE BARGAINING AGREEMENT**

*Duty to bargain collectively* — The CBA proposed by the union may be unilaterally imposed upon the employer when it is found that the employer has violated its duty to bargain collectively. (Guagua Nat'l. Colleges *vs.* Guagua Nat'l. Colleges Faculty Labor Union, G.R. No. 204693, July 13, 2016) p. 106

— The effect of an employer's or a union's actions individually is not the test of good-faith bargaining, but the impact of all such occasions or actions, considered as a whole. (*Id.*)

*No strike, no lock-out provision* — A "no strike, no lock-out" provision in the CBA "may only be invoked by an employer when the strike is economic in nature or one which is conducted to force wage or other agreements from the employer that are not mandated to be granted by law; it is not applicable when the strike is grounded on unfair labor practice. (Guagua Nat'l. Colleges *vs.* Guagua Nat'l. Colleges Faculty Labor Union, G.R. No. 204693, July 13, 2016) p. 106

*Strikes and lockouts* — The Secretary of Labor and Employment's certification for compulsory arbitration of a dispute over which he/she has assumed jurisdiction is but an exercise of the powers granted to him/her by Art. 263(g) of the Labor Code as amended; these have been characterized as an exercise of the police power of the State, aimed at promoting the public good. (Guagua Nat'l. Colleges *vs.* Guagua Nat'l. Colleges Faculty Labor Union, G.R. No. 204693, July 13, 2016) p. 106

*Unfair labor practice* — There is a need for an express stipulation in the CBA that unfair labor practices should be resolved in the ultimate by the voluntary arbitrator or panel of voluntary arbitrators since the same fall within a special class of disputes that are generally within the exclusive original jurisdiction of the Labor Arbiter by express provision of the law; absent such express stipulation, the phrase 'all disputes' or "any other matter or dispute" for that matter should be construed as limited to the areas of conflict traditionally within the jurisdiction of Voluntary Arbitrators. (Guagua Nat'l. Colleges *vs.* Guagua Nat'l. Colleges Faculty Labor Union, G.R. No. 204693, July 13, 2016) p. 106

**COMMON CARRIERS**

*Breach of contract of carriage* — In an action based on a breach of contract of carriage, the aggrieved party does not have to prove that the common carrier was at fault or was negligent; all that he has to prove is the existence of the contract and the fact of its nonperformance by the carrier. (Cathay Pacific Airways, Ltd. *vs.* Sps. Fuentebella, G.R. No. 188283, July 20, 2016) p. 604

— The law, recognizing the obligatory force of contracts, will not permit a party to be set free from liability for any kind of misperformance of the contractual undertaking or a contravention of the tenor thereof; breach upon the contract confers upon the injured party a valid cause for recovering that which may have been lost or suffered. (*Id.*)

**COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)**

*Illegal possession of dangerous drugs* — Selling of *shabu*, regardless of quantity, is punishable by life imprisonment under Sec. 5, par. 1 of the same law. (People *vs.* Rivera *y* Dumo, G.R. No. 208837, July 20, 2016) p. 770

— The delivery of the illicit drug to the poseur buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction. (*Id.*)

— The following elements must be sufficiently 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. (*Id.*)

**COMPROMISES AND SETTLEMENT**

*Compromise agreement* — A compromise may be entered into at any stage of the case pending trial, on appeal and even after finality of judgment; the validity of the agreement is determined by compliance with the requisites and the principles of contracts, not by when it was entered into; a compromise agreement cannot bind a party who did not voluntarily take part in the settlement itself and

gave specific individual consent. (Heirs of Albano *vs.* Sps. Ravanes, G.R. No. 183645, July 20, 2016) p. 557

**CONSPIRACY**

*Existence of* — Exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it; conspiracy is not a crime unless the law considers it a crime and prescribes a penalty for it; when conspiracy is a means to commit a crime, it is indispensable that the agreement to commit the crime among all the conspirators, or their community of criminal design must be alleged and competently shown. (Macapagal-Arroyo *vs.* People, G.R. No. 220598, July 19, 2016) p. 367

*Wheel conspiracy and chain conspiracy* — Two nuances of appreciating conspiracy as a means to commit a crime; the wheel conspiracy occurs when there is a single person or group (the hub) dealing individually with two or more other persons or groups (the spokes); the spoke typically interacts with the hub rather than with another spoke; in the event that the spoke shares a common purpose to succeed, there is a single conspiracy; however, in the instances when each spoke is unconcerned with the success of the other spokes, there are multiple conspiracies; chain conspiracy exists when there is successive communication and cooperation in much the same way as with legitimate business operations between manufacturer and wholesaler, then wholesaler and retailer, and then retailer and consumer; this involves individuals linked together in a vertical chain to achieve a criminal objective. (Macapagal-Arroyo *vs.* People, G.R. No. 220598, July 19, 2016) p. 367

**CONTRACTS**

*Fraud* — There is fraud when one party is induced by the other to enter into a contract, through and solely because of the latter's insidious words or machinations, but not all forms of fraud can vitiate consent; under Art. 1330, fraud refers to *dolo causante* or causal fraud, in which, prior to or simultaneous with execution of a contract,

one party secures the consent of the other by using deception, without which such consent would not have been given. (Georg *vs.* Holy Trinity College, Inc., G.R. No. 190408, July 20, 2016) p. 631

*Requisites* — The essential requisites of a contract under Art. 1318 of the New Civil Code are: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; and (3) Cause of the obligation which is established. (Georg *vs.* Holy Trinity College, Inc., G.R. No. 190408, July 20, 2016) p. 631

**CORPORATIONS**

*Derivative suit* — A remedy designed by equity as a principal defense of the minority shareholders against the abuses of the majority; under the Corporation Code, the corporation's power to sue is lodged with its board of directors or trustees; however, when its officials refuse to sue, or are the ones to be sued, or hold control of the corporation, an individual stockholder may be permitted to institute a derivative suit to enforce a corporate cause of action on behalf of a corporation in order to protect or vindicate its rights; in such actions, the corporation is the real party in interest, while the stockholder suing on behalf of the corporation is only a nominal party. (Forest Hills Golf and Country Club, Inc. *vs.* Fil-Estate Properties, Inc., G.R. No. 206649, July 20, 2016) p. 729

— For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit; it is also required that the stockholder should have exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires and that such fact is alleged with particularity in the complaint; the purpose for this rule is to make the derivative suit the final recourse of the stockholder, after

all other remedies to obtain the relief sought had failed; the stockholder is also required to allege, explicitly or otherwise, the fact that there were no appraisal rights available for the acts complained of, as well as a categorical statement that the suit is not a nuisance or a harassment suit. (*Id.*)

*Doctrine of apparent authority* — The existence of apparent authority 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, whether within or beyond the scope of his ordinary powers. (Georg *vs.* Holy Trinity College, Inc., G.R. No. 190408, July 20, 2016) p. 631

*Intra-corporate controversies* — When present. (Forest Hills Golf and Country Club, Inc. *vs.* Fil-Estate Properties, Inc., G.R. No. 206649, July 20, 2016) p. 729

**COURT OF APPEALS**

*Procedure in the Court of Appeals* — Petitioners should have reckoned the 15-day period to appeal from the receipt of the denial of the manifestation and motion to stay execution of judgment and not from their receipt of the denial of the motion for reconsideration; petitioners' manifestation and motion to stay execution of judgment is, in actuality, a motion for reconsideration of the CA decision; the relief prayed for by petitioners in his manifestation and motion is the same relief obtained once a motion for reconsideration is filed on time to stay the execution of judgment. (Heirs of Albano *vs.* Sps. Ravanes, G.R. No. 183645, July 20, 2016) p. 557

**COURTS**

*Jurisdiction* — Jurisdiction is conferred by law and is determined by the material allegations of the complaint, containing the concise statement of ultimate facts of a plaintiff's cause of action. (Forest Hills Golf and Country Club,

Inc. *vs.* Fil-Estate Properties, Inc., G.R. No. 206649, July 20, 2016) p. 729

**CRIMINAL LIABILITY**

*Effect of death of the accused* — The death of the accused pending appeal of his conviction extinguishes his criminal liability as well as his civil liability *ex delicto*. (People *vs.* Cenido *y* Picones, G.R. No. 210801, July 18, 2016) p. 249

**CRIMINAL PROCEDURE**

*Information* — Once a complaint or information is filed in court any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the court; although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in court he cannot impose his opinion on the trial court. (Napoles *vs.* Hon. Sec. De Lima, G.R. No. 213529, July 13, 2016) p. 161

— The prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint; the prosecutor determines during preliminary investigation whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial; at this stage, the determination of probable cause is an executive function; if done to issue an arrest warrant, the determination of probable cause is a judicial function. (*Id.*)

**DAMAGES**

*Actual damages* — Only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed; only substantiated expenses and those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

*Loss of earning capacity* — Certification issued by the victim's employer shall be considered as sufficient basis for a fair and reasonable computation of the victim's loss of earning capacity. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

*Moral damages* — Damages may be awarded only when the breach is wanton and deliberately injurious, or the one responsible had acted fraudulently or with malice or bad faith, bad faith is a question of fact that must be proven by clear and convincing evidence. (Cathay Pacific Airways, Ltd. *vs.* Sps. Fuentebella, G.R. No. 188283, July 20, 2016) p. 604

*Temperate damages* — Awarded when the amount of actual damages cannot be determined because no substantiating documentary evidence was presented in court. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

**DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)**

*Buy-bust operation* — Non-coordination of the police officers with the Philippine Drug Enforcement Agency did not render the buy-bust operation invalid; nothing in Section 86 states that non-coordination with the PDEA renders the buy-bust operation invalid. (People *vs.* Caiz *y* Talvo, G.R. No. 215340, July 13, 2016) p. 183

*Chain of custody rule* — Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, substantial compliance with the legal requirements on the handling of the seized item is sufficient; mere lapses in procedure need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been properly preserved and safeguarded. (People *vs.* Ygot *y* Repuela, G.R. No. 210715, July 18, 2016) p. 236

— Courts are reminded to exercise a higher level of scrutiny when deciding cases involving miniscule amounts of dangerous drugs; there should be stricter compliance with the rule on the chain of custody when the amount

of the dangerous drug is minute due to the possibility that the seized item was tampered. (People *vs.* Caiz *y* Talvo, G.R. No. 215340, July 13, 2016) p. 183

— Presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative. (People *vs.* Ygot *y* Repuela, G.R. No. 210715, July 18, 2016) p. 236

— Requires that upon seizure of the illegal drug items, the apprehending team having initial custody of the drugs shall: (a) conduct a physical inventory of the drugs; (b) take photographs thereof; (c) in the presence of the person from whom these items were seized or confiscated; (d) a representative from the media and the Department of Justice and any elected public official; and (e) who shall all be required to sign the inventory and be given copies thereof. (People *vs.* Reniedo *y* Cauilan, G.R. No. 206927, July 13, 2016) p. 142

— Sixteen (16) hours from the seizure of the alleged dangerous drugs to its submission to the provincial crime laboratory, not unreasonable; such time is still within the twenty-four (24) hour period required by law within which to deliver the confiscated items to the crime laboratory for examination. (People *vs.* Ygot *y* Repuela, G.R. No. 210715, July 18, 2016) p. 236

— The chain-of-custody rule is a method of authenticating evidence by which the *corpus delicti* presented in court is shown to be one and the same as that which was retrieved from the accused or from the crime scene. (*Id.*)

— The failure to establish with certainty where the seized sachets were marked affects the integrity of the chain of custody of the *corpus delicti*. (People *vs.* Caiz *y* Talvo, G.R. No. 215340, July 13, 2016) p. 183

— The following links must be established by the prosecution: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized

by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court. (*Id.*)

*Illegal sale of dangerous drugs* — Elements of violation of Sec. 5 of R.A. No. 9165 are: (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. (People *vs.* Caiz *y* Talvo, G.R. No. 215340, July 13, 2016) p. 183

— Essential elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and its payment; what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. (People *vs.* Ygot *y* Repuela, G.R. No. 210715, July 18, 2016) p. 236

**DENIAL**

*Defense of* — Denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

— The defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act. (People *vs.* Ygot *y* Repuela, G.R. No. 210715, July 18, 2016) p. 236

**DEPOSITION**

*Deposition pending action* — Depositions pending action may be conducted by oral examination or written interrogatories and may be taken at the instance of any party, with or

without leave of court; leave of court is not necessary to take a deposition after an answer to the complaint has been served; it is only when an answer has not yet been filed (but jurisdiction has been obtained over any defendant or over property subject of the action) that prior leave of court is required; the reason for this is that before filing of the answer, the issues are not yet joined and the disputed facts are not clear. (Georg *vs.* Holy Trinity College, Inc., G.R. No. 190408, July 20, 2016) p. 631

**ELECTION LAWS**

*Pre-proclamation controversy* — The following shall be proper issues that may be raised in a pre-proclamation controversy: (a) Illegal composition or proceeding of the board of canvassers; (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Secs. 233, 234, 235 and 236 of this code; (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates. (Labao, Jr. *vs.* COMELEC, G.R. No. 212615, July 19, 2016) p. 348

**EMPLOYER-EMPLOYEE RELATIONSHIP**

*Control test* — The person for whom the services are performed reserves the right to control not only the end to be achieved, but also the means by which such end is reached. (Valeroso *vs.* Skycable Corp., G.R. No. 202015, July 13, 2016) p. 93

— The power of control is indicative of an employment relationship while the absence thereof is indicative of independent contractorship. (*Id.*)

*Requisites* — To prove the claim of an employer-employee relationship, the following should be established by competent evidence: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power

of dismissal; and (4) the employer's power to control the employee with respect to the means and methods by which the work is to be accomplished; among the four, the most determinative factor in ascertaining the existence of employer-employee relationship is the "right of control test." (Valeroso *vs.* Skycable Corp., G.R. No. 202015, July 13, 2016) p. 93

**EMPLOYMENT, TERMINATION OF**

*Constructive dismissal* — Defined as dismissal in disguise or an act amounting to dismissal but made to appear as if it were not; it exists where there is cessation of work because continued employment is rendered impossible, unreasonable or unlikely, as an offer involving a demotion in rank and a diminution in pay. (Galang *vs.* Boie Takeda Chemicals, Inc., G.R. No. 183934, July 20, 2016) p. 582

— In constructive dismissal cases, the employer is charged with the burden of proving that its conduct and action or the transfer of an employee are for valid and legitimate grounds such as genuine business necessity; however, it is likewise true that in constructive dismissal cases, the employee has the burden to prove first the fact of dismissal by substantial evidence; only then when the dismissal is established that the burden shifts to the employer to prove that the dismissal was for just and/or authorized cause. (*Id.*)

— The circumstances contemplated in constructive dismissal cases are clear acts of discrimination, insensibility or disdain which necessarily precedes the apparent voluntary separation from work; if they happened after the fact of separation, it could not be said to have contributed to employee's decision to involuntary resign, or in this case, retire. (*Id.*)

*Loss of trust and confidence* — Absent ill motive or bad faith on the part of the employer, an employee dismissed for violation of the trust and confidence reposed on her is not entitled to any monetary benefits. (Celiz *vs.* Cord Chemicals, Inc., G.R. No. 200352, July 20, 2016) p. 715

— In cases of dismissal for breach of trust and confidence, proof beyond reasonable doubt of an employee's misconduct is not required; it is sufficient that the employer had reasonable ground to believe that the employee is responsible for the misconduct which renders him unworthy of the trust and confidence demanded by his position. (*Id.*)

*Management prerogative* — Management has exclusive prerogatives to determine the qualifications and fitness of workers for hiring and firing, promotion or reassignment; it is only in instances of unlawful discrimination, limitations imposed by law and collective bargaining agreement can this prerogative of management be reviewed. (Galang *vs.* Boie Takeda Chemicals, Inc., G.R. No. 183934, July 20, 2016) p. 582

*Monetary claim* — The burden of proof that the benefit has ripened into company practice, *i.e.*, giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately, rests with the employee; to be considered as a regular company practice, the employee must prove by substantial evidence that the giving of the benefit is done over a long period of time, and that it has been made consistently and deliberately. (Galang *vs.* Boie Takeda Chemicals, Inc., G.R. No. 183934, July 20, 2016) p. 582

*Retirement benefits* — A year cannot be considered long enough to constitute the grant of retirement benefits to the employees as company practice. (Galang *vs.* Boie Takeda Chemicals, Inc., G.R. No. 183934, July 20, 2016) p. 582

**EVIDENCE**

*Admissibility of out-of-court identification* — The totality of circumstances, which has been the guide in resolving the admissibility of out-of-court identification; under the totality of circumstances test, the following factors are considered: (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. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

*Circumstantial evidence* — Circumstantial evidence is sufficient to sustain a conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

*Confession* — An extra-judicial confession shall not be a sufficient ground for conviction, unless corroborated by evidence of *corpus delicti*. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

— The voluntariness of a confession may be inferred from its language such that if, upon its face, the confession exhibits no sign of suspicious circumstances tending to cast doubt upon its integrity, it being replete with details which could be supplied only by the accused reflecting spontaneity and coherence which, psychologically, cannot be associated with a mind to which violence and torture have been applied, it may be considered voluntary. (*Id.*)

*Corroborative evidence* — Rules of Court do not require that the testimony of the injured party be corroborated by independent evidence. (Cathay Pacific Airways, Ltd. *vs.* Sps. Fuentebella, G.R. No. 188283, July 20, 2016) p. 604

*Notarized document* — A notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents absent any clear and convincing proof to the contrary. (Georg *vs.* Holy Trinity College, Inc., G.R. No. 190408, July 20, 2016) p. 631

**EXECUTIVE DEPARTMENT**

*Executive agreements* — The registration of trademarks and copyrights have been the subject of executive agreements entered into without the concurrence of the Senate; some executive agreements have been concluded in conformity with the policies declared in the acts of Congress with respect to the general subject matter. (Intellectual Property Association of the Phils. *vs.* Hon. Ochoa, G.R. No. 204605, July 19, 2016) p. 276

**FORUM SHOPPING**

*Concept* — Compliance with the certification requirement is separate from, and independent of, the avoidance of forum shopping itself; both constitute grounds for the dismissal of the case, in that non-compliance with the certification requirement constitutes sufficient cause for the dismissal without prejudice to the filing of the complaint or initiatory pleading upon motion and after hearing, while the violation of the prohibition is a ground for summary dismissal thereof and for direct contempt. (Gacus *y* Amson *vs.* Castro, G.R. Nos. 194763-64, July 20, 2016) p. 667

— Forum shopping may be committed in three ways: (1) through *litis pendentia*, filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) through *res judicata*, filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) splitting of causes of action, filing multiple cases based on the same cause of action but with different prayers. (*Id.*)

— The finding of forum shopping does not automatically render the two administrative cases dismissible; the consequences of forum shopping depend on whether the act was willful and deliberate or not; if it is not willful and deliberate, the subsequent cases shall be dismissed without prejudice; but if it is willful and deliberate, both (or all, if there are more than two) actions shall be

dismissed with prejudice on the ground of either *litis pendentia* or *res judicata*. (*Id*.)

**FRAME-UP**

*Defense of* — The defense of frame-up or denial in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties; bare denials of appellant cannot prevail over the positive testimonies of the three police officers. (People *vs.* Rivera *y* Dumo, G.R. No. 208837, July 20, 2016) p. 770

**GOVERNMENT INFRASTRUCTURE CONTRACT (P.D. NO. 1594)**

*Negotiated contract* — Instances when a negotiated contract may be entered into, *viz*.: (1) in times of emergencies arising from natural calamities where immediate action is necessary to prevent imminent loss of life and/or property; (2) when there is a failure to award the contract after competitive bidding for valid cause or causes, in which case bidding is undertaken through sealed canvass of at least three (3) contractors; and (3) in cases of adjacent or contiguous contracts. (Gacus *y* Amson *vs.* Castro, G.R. Nos. 194763-64, July 20, 2016) p. 667

— Resort to a negotiated procurement/simplified bidding, unjustified in case at bar. (*Id*.)

— There must first be a failure of a competitive public bidding undertaken in accordance with the implementing rules and regulations of P.D. No. 1594 before resorting to a negotiated procurement. (*Id*.)

**INJUNCTION**

*Preliminary injunction* — In granting the injunctive writ, the Court upheld the established rule that a corporation exercises its powers through its board of directors and/or its duly authorized officers and agents, except in instances where the Corporation Code requires stockholders' approval for certain specific acts. (Tom *vs.* Rodriguez, G.R. No. 215764, July 13, 2016) p. 211

**INSURANCE LAW**

*Casualty insurance* — The insurer assumes the obligation to pay a third party in whose favor the liability of the insured arises. (Phil-Nippon Kyoei, Corp. *vs*. Gudelosao, G.R. No. 181375, July 13, 2016) p. 16

**INTERNATIONAL LAW**

*Treaties* — Distinction between treaties and international agreements; treaties which require the Senate's concurrence, on one hand, and executive agreements, which may be validly entered into without the Senate's concurrence; international agreements involving political issues or changes of national policy and those involving international arrangements of a permanent character usually take the form of treaties; but international agreements embodying adjustments of detail carrying out well-established national policies and traditions and those involving arrangements of a more or less temporary nature usually take the form of executive agreements. (Intellectual Property Association of the Phils. *vs.* Hon. Ochoa, G.R. No. 204605, July 19, 2016) p. 276

**JUDGMENTS**

*Writ of possession* — A judgment in favor of ownership, therefore, does not necessarily include possession as a necessary incident; possession and ownership are distinct legal concepts. (Sps. Latoja *vs.* Hon. Lim, G.R. No. 198925, July 13, 2016) p. 63

— Four instances when a writ of possession may issue: (1) land registration proceedings; (2) extrajudicial foreclosure of mortgage of real property; (3) judicial foreclosure of property, provided that the mortgagor has possession, and no third party has intervened; and (4) execution sales. (*Id.*)

***LITIS PENDENTIA***

*Requisites* — Requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted

and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. (Gacus *y* Amson *vs.* Castro, G.R. Nos. 194763-64, July 20, 2016) p. 667

**LOCAL GOVERNMENT CODE**

*Section 40 (e)* — Fugitives from justice in criminal or non-political cases here or abroad are disqualified from running for any elective local position; fugitive from justice includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution. (Labao, Jr. *vs.* COMELEC, G.R. No. 212615, July 19, 2016) p. 348

**MOTION FOR RECONSIDERATION**

*Second motion for reconsideration* — A motion for reconsideration, even if it was not designated as a second motion for reconsideration, is a disguised second motion for reconsideration if it is merely a reiteration of the movant's earlier arguments; being a prohibited pleading, a second motion for reconsideration does not have any legal effect and does not toll the running of the period to appeal. (Heirs of Albano *vs.* Sps. Ravanes, G.R. No. 183645, July 20, 2016) p. 557

**MOTIVE**

*Proof of* — Absence of evidence as to an improper motive strongly tends to sustain the conclusion that none existed and that the testimony is worthy of full faith and credit. (People *vs.* Ygot *y* Repuela, G.R. No. 210715, July 18, 2016) p. 236

**NATIONAL LABOR RELATIONS COMMISSION**

*Jurisdiction* — The Migrant Workers and Overseas Filipinos Act of 1995 gives the Labor Arbiters of the NLRC the original and exclusive jurisdiction over claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas

deployment, including claims for actual, moral, exemplary and other forms of damage; it further creates a joint and several liability among the principal or employer, and the recruitment/placement agency, for any and all claims involving Filipino workers. (Phil-Nippon Kyoei, Corp. *vs*. Gudelosao, G.R. No. 181375, July 13, 2016) p. 16

**PARTIES**

*Legal standing* — The question on legal standing is whether such parties have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions; the interest of a person assailing the constitutionality of a statute must be direct and personal; he must be able to show, not only that the law or any government act is invalid, but also that he sustained or is in imminent danger of sustaining some direct injury as a result of its enforcement and not merely that he suffers thereby in some indefinite way. (Intellectual Property Association of the Phils. *vs.* Hon. Ochoa, G.R. No. 204605, July 19, 2016) p. 276

**PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION STANDARD EMPLOYMENT CONTRACT (POEA-SEC)**

*Death benefits* — The claim for death benefits under the POEA-SEC is the same species as the workmen's compensation claims under the Labor Code; both of which belong to a different realm from that of Maritime Law. (Phil-Nippon Kyoei, Corp. *vs*. Gudelosao, G.R. No. 181375, July 13, 2016) p. 16

— The principal/employer is solidarily liable with the recruitment/placement agency for all claims and liabilities and the release of one of the solidary debtors redounds to the benefit of the other. (*Id.*)

**PLUNDER LAW (R.A. NO. 7080)**

*Section 1 (d)* — Ill-gotten wealth means any asset, property, business enterprise or material possession of any person

within the purview of Sec. Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes: 1) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury; to discern the proper import of the phrase raids on the public treasury, the key is to look at the accompanying words: misappropriation, conversion, misuse or malversation of public funds. (Macapagal-Arroyo *vs.* People, G.R. No. 220598, July 19, 2016) p. 367

*Violation of* — The *corpus delicti* of plunder is the amassment, accumulation or acquisition of ill-gotten wealth valued at not less than ₱50,000,000.00; the failure to establish the *corpus delicti* should lead to the dismissal of the criminal prosecution. (Macapagal-Arroyo *vs.* People, G.R. No. 220598, July 19, 2016) p. 367

— The law on plunder requires that a particular public officer must be identified as the one who amassed, acquired or accumulated ill-gotten wealth because it plainly states that plunder is committed by any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth in the aggregate amount or total value of at least ₱50,000,000.00 through a *combination* or *series* of overt criminal acts as described in Sec. 1 (d) hereof. (*Id.*)

**QUIETING OF TITLE**

*Action for* — An action to quiet title to property or to remove a cloud thereon is a remedy or form of proceeding originating in equity jurisprudence; the plaintiff in such an action seeks for adjudication that any adverse claim of title or interest in the property in question is invalid, so that the plaintiff and those claiming under him or her may forever be free from any danger of the hostile claim; for the action to prosper, two requisites must concur, *viz*: (1) the plaintiff or complainant must

have a legal or an equitable title to or interest in the real property which is the subject matter of the action; and (2) the deed, claim, encumbrance or proceeding that is being alleged as a cloud on plaintiff's title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. (Heirs of Castillejos *vs.* La Tondeña Incorporada, G.R. No. 190158, July 20, 2016) p. 621

**RAPE**

*Commission of* — Accused is guilty only of simple rape where the age and relationship of the victim to the offender is specifically alleged in the information and established during the trial. (People *vs.* Salvador, G.R. No. 217381, July 20, 2016) p. 782

— Failure of the victim to shout for help does not negate rape and the victim's lack of resistance especially when intimidated by the offender into submission does not signify voluntariness or consent; delay in reporting rape incidents, in the face of threats of physical violence, cannot be taken against the victim because delay in reporting an incident of rape is not an indication of a fabricated charge and does not necessarily cast doubt on the credibility of the complainant. (People *vs.* Arcillo, G.R. No. 211028, July 13, 2016) p. 153

— The prosecution must prove that: (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. (*Id.*)

*Qualified rape* — The felony of rape is qualified when the victim is under 18 years of age and the offender is a parent, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim. (People *vs.* Salvador, G.R. No. 217381, July 20, 2016) p. 782

**ROBBERY WITH HOMICIDE**

*Commission of* — It is necessary that the robbery itself be established conclusively as any other essential element of the crime. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

— The prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property taken thus belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

— To warrant a conviction for Robbery with Homicide, the prosecution must prove the confluence of the following elements: (1) the taking of personal property with the use of violence or intimidation against a person; (2) the property thus taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

— When the killing is committed by reason of or on the occasion of the robbery, the qualifying circumstances attendant to the killing would be considered as generic aggravating circumstances. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

**SALES**

*Pacto de retro sale* — The title and ownership of the property sold are immediately vested in the vendee *a retro;* as a result, the vendee *a retro* has a right to the immediate possession of the property sold, unless otherwise agreed upon. (Sps. Latoja *vs.* Hon. Lim, G.R. No. 198925, July 13, 2016) p. 63

**SEARCH WARRANTS**

*Application of* — An application for search warrant shall be filed with the following: a) any court within whose territorial jurisdiction a crime was committed; and b) for compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced. (Petron Gasul LPG Dealers Association *vs.* Lao, G.R. No. 205010, July 18, 2016) p. 216

*Concept* — A written order issued in the name of the People of the Philippines, signed by a judge, and directed to a peace officer commanding him to search for the personal property described therein and bring it to the court; it shall be issued only upon probable cause personally determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized. (Petron Gasul LPG Dealers Association *vs.* Lao, G.R. No. 205010, July 18, 2016) p. 216

**STABILIZATION AND REGULATION OF RENTALS OF CERTAIN RESIDENTIAL UNITS FOR OTHER PURPOSES, ACT PROVIDING FOR (B.P. NO. 877)**

*Section 5 (c)* — Grounds for judicial ejectment, the requisites are: (1) the owner's/lessor's legitimate need to repossess the leased property for his own personal use or for the use of any of his immediate family; (2) the owner/lessor does not own any other available residential unit within the same city or municipality; (3)the lease for a definite period has expired; (4) there was formal notice at least three (3) months prior to the intended date to repossess the property; and (5) the owner must not lease or allow the use of the property to a third party for at least one year. (Heirs of Albano *vs.* Sps. Ravanes, G.R. No. 183645, July 20, 2016) p. 557

**STATUTES**

*Rules of procedure* — May be suspended when their rigid application would frustrate rather than promote justice. (Fernandez *vs.* Sps. Ronulo, G.R. No. 187400, July 13, 2016) p. 42

— Strict adherence to rules of procedure must not get in the way of achieving substantial justice; the Court, on compelling and meritorious grounds, has overlooked procedural flaws, such as: (1) lack of a motion for reconsideration prior to a Rule 65 petition; (2) non-exhaustion of administrative remedies; (3) a disregard of the hierarchy of courts; and (4) an erroneous service of a petition on the opposing party, instead of the counsel of record. (Sps. Latoja *vs.* Hon. Lim, G.R. No. 198925, July 13, 2016) p. 63

**WITNESSES**

*Credibility of* — 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. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

— Factual findings made by the trial court, which had the opportunity to directly observe the witnesses and to determine the probative value of the testimonies are entitled to great weight and respect because the trial court is in a better position to assess the same. (People *vs.* Quitola *y* Balmonte, G.R. No. 200537, July 13, 2016) p. 75

— Factual findings of trial courts especially those which revolve on matters of credibility of witnesses deserve to be respected when no glaring errors bordering on a gross misapprehension of the facts, or where no speculative, arbitrary and unsupported conclusions, can be gleaned from such findings. (People *vs.* Rivera *y* Dumo, G.R. No. 208837, July 20, 2016) p. 770

— It is highly improbable that a 13-year-old girl would impute a crime as serious as rape to the common-law spouse of her mother, undergo the humiliation of 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. (People *vs.* Salvador, G.R. No. 217381, July 20, 2016) p. 782

— Lack of a detailed description of the assailants should not lead to a conclusion that the identification was erroneous; victims of violent crimes have varying reactions to shocking events. (People *vs.* Bacero *y* Casabon, G.R. No. 208527, July 20, 2016) p. 745

— The most natural reaction of a witness to a crime is to strive to look at the appearance of the perpetrator and to observe the manner in which the offense is perpetrated; most often, the face and body movements of the assailant create a lasting impression which cannot be easily erased from their memory. (*Id.*)

— When a defense witness is a close friend, courts should view such testimony with skepticism, more so when the same is uncorroborated. (*Id.*)

— When the credibility of a witness is in issue, the trial court's calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, are accorded high respect if not conclusive effect, most especially when such findings are affirmed by the appellate court; unless there is a clear showing that the trial court and the appellate court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance, this rule should not be disturbed. (*Id.*)

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Agpalo, Legal Ethics, 2009 ed., p. 518 ... 275
Carale, The Philippine Insurance Law Code, Comments and Cases, 2014, p. 103 ... 40
De Leon & De Leon, Jr., The Insurance Code of the Philippines Annotated, 2014, p. 426 ... 40

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Merlin M. Magallona, A Primer in International Law 66-67 (1997) ........ 346

## II. FOREIGN AUTHORITIES

### A. STATUTES

Madrid Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks
Art. 2 ........ 290-291, 322, 331
Art. 3 ........ 331
Art. 4 in relation to Art. 5 ........ 323
Art. 5 ........ 333-334
Vienna Convention on the Law on Treaties (1969)
Art. 26 ........ 301

### B. BOOKS

43 Am Jur 2d Insurance § 555 ........ 40
Black's Law Dictionary, 941 (6th Ed. 1991) ........ 293
Black's Law Dictionary 433 (6th ed., 1990) ........ 543
Hyde on International Law [Revised Edition], Vol. 2, pp. 1405, 1416-1418 ........ 314
Lippman, M. R., Contemporary Criminal Law, Concepts, Cases, and Controversies, Third Ed., Sage Publication, California, USA, 2013, p. 195 ........ 422
Willoughby on the U.S. Constitutional Law, Vol. I [2d ed.], pp. 537-540 ........ 314