PHILIPPINE REPORTS

VOL. 792

AUGUST 1, 2016 TO AUGUST 15, 2016

VOLUME 792

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 1, 2016 TO AUGUST 15, 2016

SUPREME COURT
MANILA
2017

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 9436. August 1, 2016]

SPOUSES NUNILO and NEMIA ANAYA, *complainants, vs.* **ATTY. JOSE L. ALVAREZ, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; EXPECTED TO MAINTAIN NOT ONLY LEGAL PROFICIENCY BUT ALSO A HIGH STANDARD OF MORALITY, HONESTY, INTEGRITY, AND FAIR DEALING.— The practice of law is a privilege granted only to those who possess the strict intellectual and moral qualification required of a lawyer. As vanguards of our legal system, they are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity, and fair dealing. Their conduct must always reflect the values and norms of the legal profession as embodied in the CPR.

2. ID.; ID.; GROSS MISCONDUCT; THE DELIBERATE FAILURE TO PAY DEBTS AND THE ISSUANCE OF WORTHLESS CHECKS CONSTITUTE GROSS MISCONDUCT; PENALTY IN CASE AT BAR.— Time and again, this Court has repeatedly held that the act of a lawyer in issuing a check without sufficient funds to cover them or, worst, drawn against a closed account, constitutes willful dishonesty and unethical conduct that undermines the public confidence in the law and the members of the bar. It shows a lawyer's low regard to his commitment to the Oath, which he swore to uphold and respect when he joined the legal profession.

> Without a quibble, Atty. Alvarez's failure to pay his debts despite several demands, and his act of issuing numerous checks which were dishonored for having been drawn against a closed account, puts his moral character in serious doubt. It demonstrates his lack of reverence to the lawyer's oath, and seriously and irreparably tarnished the image of the profession he promised to hold in high esteem. x x x [T]he deliberate failure to pay debts and the issuance of a worthless checks constitute gross misconduct. x x x [I]n *Co v. Atty. Bernardino* and *Lao v. Atty. Medel,* the Court suspended the respondent lawyers for a period of one (1) year for their failure to pay just debts and for issuing worthless checks as there was no showing of restitution on their part. In line with these, the Court finds the suspension of one (1) year warranted.

APPEARANCES OF COUNSEL

Jose L. Alvarez, Sr., for respondent.

D E C I S I O N

MENDOZA, *J.*:

Before the Court is a Complaint[1] for disbarment filed by complainants Nunilo and Nemia Anaya *(Spouses Anaya)* against respondent Atty. Jose L. Alvarez, Jr. *(Atty. Alvarez)* before the Integrated Bar of the Philippines-Commission on Bar Discipline *(IBP-CBD)* for fraudulent and deceitful conducts.

The Antecedents:

In their Complaint, Spouses Anaya alleged that: (1) Atty. Alvarez prepared and notarized the deeds of sale of the three *(3)* properties they sold; (2) Atty. Alvarez asked them for cash in exchange for his four *(4)* Allied Bank checks with the assurance that the checks would be honored upon presentment to the drawee bank once they fell due as they would be fully funded on due date; (3) they eventually agreed to give cash to Atty. Alvarez in exchange for the said checks relying on his assurance and

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[1] *Rollo*, pp. 2-11.

professional stature; (4) they withdrew from their Philippine National Bank account the amounts corresponding to the four *(4)* checks issued by Atty. Alvarez, as follows: [a] ₱50,000.00 for Allied Bank Check No. 35836,[2] dated December 6, 2011; [b] ₱95,000.00 for Allied Bank Check No. 35835,[3] dated December 20, 2011; [c] ₱50,000.00 for Allied Bank Check No. 35838,[4] dated January 8, 2011; and [d] ₱200,000.00 for Allied Bank Check No. 35837,[5] dated January 15, 2012; (e) the said checks, except Check No. 35838, which appeared stale due to an erroneous entry of the date, were dishonored by the drawee bank by reason ACCOUNT CLOSED; (6) they made repeated verbal and written demands on Atty. Alvarez but these remained unheeded; and (7) after receipt of the second demand letter, Atty. Alvarez went to spouses Anaya and offered the amount of ₱20,000.00 as partial payment but they refused to accept the same as they wanted the return of the full amount due.

In his Answer,[6] Atty. Alvarez admitted his obligation but claimed that the cash he obtained from spouses Anaya was a simple loan with an interest of two percent *(2%)* per month and that, at the very outset, they knew that the checks were issued mainly as a collateral for the loan and that the checks were not funded. He asserted that he had no intention of defrauding them and, in fact, he went to their residence and offered to pay the loan at ₱20,000.00 plus 2% interest a month but his request was not granted. Atty. Alvarez reiterated his request to settle his obligation on a monthly basis plus the 2% monthly interest.

In its June 10, 2015 Report and Recommendation,[7] the IBP-CBD found that Atty. Alvarez violated Rule 16.04 of the Code

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[2] *Id*. at 21.

[3] *Id*. at 22.

[4] *Id*. at 23.

[5] *Id*. at 24.

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

[7] *Id*. at157-159.

of Professional Responsibility *(CPR)* and recommended that he be reprimanded and be reminded to settle and pay his obligation to spouses Anaya.

In its Resolution No. XXI-2015-611,[8] dated June 30, 2015, the IBP-Board of Governors resolved to adopt and approve with modification the report and recommendation of the IBP-CBD and recommended the suspension of Atty. Alvarez, Jr. from the practice of law for a period of one *(1)* year.

The Court agrees with the recommendation of the IBP Board of Governors.

The practice of law is a privilege granted only to those who possess the strict intellectual and moral qualification required of a lawyer.[9] As vanguards of our legal system, they are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity, and fair dealing.[10] Their conduct must always reflect the values and norms of the legal profession as embodied in the CPR.[11]

Time and again, this Court has repeatedly held that the act of a lawyer in issuing a check without sufficient funds to cover them or, worst, drawn against a closed account, constitutes willful dishonesty and unethical conduct that undermines the public confidence in the law and the members of the bar.[12] It shows a lawyer's low regard to his commitment to the Oath, which he swore to uphold and respect when he joined the legal profession.[13]

Without a quibble, Atty. Alvarez's failure to pay his debts despite several demands, and his act of issuing numerous checks

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[8] *Id*. at 155-156.

[9] *Re: Petition of Al Argosino To Take The Lawyer's Oath*, 336 Phil. 766, 769 (1997).

[10] *Bengco v. Atty. Bernardo*, 687 Phil. 7, 16 (2012).

[11] *Lao v. Atty. Medel*, 453 Phil. 115, 120-121 (2003).

[12] *Yuson v. Atty. Vitan*, 528 Phil. 939, 951-952 (2006).

[13] *Wilkie v. Atty. Limos*, 591 Phil. 1, 8 (2008).

which were dishonored for having been drawn against a closed account, puts his moral character in serious doubt. It demonstrates his lack of reverence to the lawyer's oath, and seriously and irreparably tarnished the image of the profession he promised to hold in high esteem.[14] Atty. Alvarez's contention that he offered to pay his debts on a monthly basis but was refused by Spouses Anaya fails to persuade. He should have known that a mere offer to pay a debt is insufficient unless accompanied by an actual tender of payment. Moreover, the Court notes that the loan was obtained by Atty. Alvarez in 2011 but up to date, no payment has been made. Likewise, his defense that he merely issued the checks as collateral to the loan is untenable. They could not have been used to secure a loan as it was not only unfunded, but the account to which these checks were drawn was also already closed.

Indeed, the deliberate failure to pay debts and the issuance of a worthless checks constitute gross misconduct.[15] In *Moreno v. Atty. Araneta*,[16] the Court disbarred a lawyer for issuing two *(2)* checks despite knowledge that the said checks were drawn against a closed account. It found the said act "abhorrent and against exacting standards of morality and decency required of a member of the bar." Thus, the Court explained:

> Indeed, in recent cases, we have held that the issuance of worthless checks constitutes gross misconduct, as the effect transcends the private interests of the parties directly involved in the transaction and touches the interests of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public since the circulation of valueless commercial papers can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest. Thus, paraphrasing Black's definition, a drawer who issues an unfunded check deliberately reneges on his private duties he owes his fellow

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[14] *Barrientos v. Atty. Libiran-Meteoro*, 480 Phil. 661, 673 (2004).

[15] *Id*. at 671.

[16] 496 Phil. 788, 796 (2005).

men or society in a manner contrary to accepted and customary rule of right and duty, justice, honesty or good morals.

Thus, we have held that the act of a person in issuing a check knowing at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of the check in full upon its presentment, is also a manifestation of moral turpitude.

Nonetheless, in *Co v. Atty. Bernardino*[17] and *Lao v. Atty. Medel*,[18] the Court suspended the respondent lawyers for a period of one (1) year for their failure to pay just debts and for issuing worthless checks as there was no showing of restitution on their part. In line with these, the Court finds the suspension of one (1) year warranted.

WHEREFORE, Atty. Jose L. Alvarez, Jr. is hereby found guilty of gross misconduct and **SUSPENDED** from the practice of law for one (1) year, effective upon his receipt of this decision, with the **WARNING** that a repetition of the same or any other misconduct will be dealt with more severely.

Let a copy of this Decision be entered in respondent's record as a member of the Bar, and notice served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

Brion, J., on leave.

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[17] 349 Phil. 16 (1998).

[18] 453 Phil. 115 (2003).

SECOND DIVISION

[A.M. No. P-16-3485. August 1, 2016]
(Formerly A.M. No. 14-4-47-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ELENA S. DIONISIO, Former Officer-in-Charge, Interpreter I, Municipal Trial Court, Cardona, Rizal,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; CLERKS OF COURT AND THOSE ACTING IN THIS CAPACITY PERFORM A DELICATE FUNCTION AS DESIGNATED CUSTODIAN OF THE COURT'S FUNDS, RECORDS AND PROPERTIES, AND ANY LOSS, SHORTAGE OR IMPAIRMENT OF THOSE FUNDS AND PROPERTY MAKES THEM ACCOUNTABLE.— The Court has always reminded court personnel tasked with collections of court funds to immediately deposit with the authorized government depositories the various funds they have collected as they are not authorized to keep funds in their custody. The unwarranted failure to fulfill these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability. Without a quibble, the failure of Dionisio to remit her collections promptly was unjustifiable. It deprived the court of interest that could have been earned if only these amounts were deposited punctually as instructed. x x x It must be emphasized that the safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds. Clerks of Courts and those acting in this capacity perform a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. Hence, any loss, shortage, destruction or impairment of those funds and property makes them accountable. x x x Surely, Dionisio would have warranted the maximum penalty of dismissal were it not for the fact that she had already retired from the service.

Nonetheless, while dismissal from the service is no longer feasible, a fine of ₱10,000.00 is in order considering that this is her first infraction and she has fully restituted her shortages.

D E C I S I O N

MENDOZA, *J.*:

This administrative case stemmed from the in-house financial audit conducted on the books of accounts of Elena S. Dionisio *(Dionisio)*, former Officer-in-Charge and Interpreter I, Municipal Trial Court, Cardona, Rizal, covering the period from August 1, 2005 to December 31, 2006. The audit was made following the appointment of Mary Odette C. Aseoche as Clerk of Court II of the said court. The audit was conducted by the Fiscal Monitoring Division, Court Management Office of the Office of the Court Administrator *(OCA)* in June 2008.

Based on the documents submitted, Dionisio incurred shortages in the various funds of the Court, broken down as follows:

Judicial Development Fund *(JDF)*	₱20,939.07
Special Allowance for the Judiciary Fund *(SAJ)*	17,534.00
Mediation Fund	9,000.00
Fiduciary Fund (over deposit)	(500.00)
Unwithdrawn Sheriff's Trust Fund	500.00
Total	₱47,473.07

The shortages in the JDF and SAJ were due to non-remittance of collections for September 2006, while the shortage in the mediation fund was due to its non-remittance of collections from October 2005 to November 2006. On the other hand, the over-deposit in the fiduciary fund represents the unwithdrawn sheriff's fund.

In a Letter,[1] dated July 7, 2008, Dionisio was directed to submit the documents necessary to complete the audit and a

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[1] *Rollo*, pp. 7-8.

written explanation for the delayed remittances. As she failed to comply, the OCA sent another Letter,[2] dated January 5, 2009, reiterating its previous directives. In her August 27, 2009 Letter,[3] Dionisio requested for an extension of time to comply but despite the grant of her request, no compliance was submitted.

Apparently, the audit team inquired from the Employees Welfare and Benefits Division, Office of the Administrative Services, and found out that Dionisio compulsorily retired on August 26, 2012 but she did not submit any documents to process her clearance. The court did not hear anything from her until in February 2014 when she inquired about her clearance application. Dionisio was informed that she could not be issued a clearance because of her pending accountabilities. Thus, on February 27, 2014, Dionisio restituted her shortages amounting to ₱47,473.07.

In its October 22, 2014 Memorandum,[4] the OCA found Dionisio administratively liable for not remitting her collections on time and recommended that: (1) the report be docketed as a regular administrative matter against Dionisio; (2) a fine in the amount of ₱5,000.0 and a penalty amounting to ₱21,993.49 representing the accumulated interest earned for the delayed remittances at 6% interest be imposed upon her; and (3) she be allowed to process her court clearance upon payment of the fine and realizable interest.

Thereafter, the case was elevated to the Court.

The Court's Ruling

The Court agrees with the recommendation of the OCA except as to the penalty.

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[2] *Id*. at 10.

[3] *Id*. at 11.

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

The Court has always reminded court personnel tasked with collections of court funds to immediately deposit with the authorized government depositories the various funds they have collected as they are not authorized to keep funds in their custody.[5] The unwarranted failure to fulfil these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability.[6]

Without a quibble, the failure of Dionisio to remit her collections promptly was unjustifiable. It deprived the court of interest that could have been earned if only these amounts were deposited punctually as instructed.[7] Dionisio incurred cash shortages amounting to ₱47,473.07 from September 2006 to November 2006 and failed to comply with the lawful orders of the OCA requiring her to give a satisfactory explanation for the shortages and failed to produce the documents required to complete the audit. In fact, she did not give attention and respect to these directives even after her compulsory retirement on August 26, 2012. It was only on February 27, 2014 that she paid her shortages after she could not get a clearance from the court.

It must be emphasized that the safekeeping of funds and collections is essential to an orderly administration of justice, and no protestation of good faith can override the mandatory nature of the circulars designed to promote full accountability for government funds.[8] Clerks of Courts and those acting in this capacity perform a delicate function as designated custodian of the court's funds, revenues, records, properties and premises. Hence, any loss, shortage, destruction or

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[5] *Re: Report on the Financial Audit Conducted in the MTCC-OCC, Angeles City*, 525 Phil. 548, 560 (2006).

[6] *Office of the Court Administrator v. Elumbaring*, 673 Phil. 84, 94 (2011).

[7] *Office of the Court Administrator v. Nini*, 685 Phil. 340, 350 (2012).

[8] *Id*.

impairment of those funds and property makes them accountable.[9]

In *Office of the Court Administrator v. Atty. Galo*,[10] the Court held that the failure of the respondent clerk of court to remit funds deposited with him, as well as to give a satisfactory explanation, constituted gross dishonesty, grave misconduct and even malversation of public funds to which the supreme penalty of dismissal would have been imposed if not for the fact that he had already retired from the service.

In *In Re: Report on Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City*,[11] the Court imposed upon the respondent retired clerk of court a fine equivalent to six months salary, for incurring shortages in his remittances to the JDF and the General Fund.

Also, in *In re: Delayed Remittance of Collections of Odtuhan*,[12] the Court held that an unjustified delay in remitting collections constituted grave misconduct. Odtuhan acted as the branch clerk of court for one day and she failed to remit her collections within 24 hours from receipt thereof. The Court, however, lowered the penalty to fine in the amount of ₱10,000.00 for humanitarian reason considering that she had already paid the full amount and was afflicted with ovarian cancer.

Surely, Dionisio would have warranted the maximum penalty of dismissal were if not for the fact that she has already retired from the service. Nonetheless, while dismissal from the service is no longer feasible, a fine of ₱10,000.00 is in order considering that this is her first infraction and she has fully restituted her shortages.

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[9] *Report on the Financial Audit Conducted at the MCTC-Mabalacat, Pampanga,* 510 Phil. 237, 242 (2005).

[10] 373 Phil. 483, 492 (1999).

[11] 496 Phil. 814 (2005).

[12] 445 Phil. 220 (2003).

WHEREFORE, Elena S. Dionisio, former Officer-in-Charge, Interpreter I, Municipal Trial Court, Cardona, Rizal is **FINED** in the amount of Ten Thousand Pesos (₱10,000.00) and to pay the unrealized interest amounting to ₱21,993.49, to be deducted from her retirement benefits.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 192790. August 1, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **YOLANDO LIBRE *alias* "Nonoy,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FINDINGS THEREON ARE GENERALLY NOT DISTURBED ON APPEAL BECAUSE IT HAS THE UNIQUE OPPORTUNITY TO OBSERVE THE DEMEANOR OF WITNESSES AND IS IN THE BEST POSITION TO DISCERN WHETHER THEY ARE TELLING THE TRUTH.— [W]hen the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Moreover, credibility,

to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, as in this case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.

2. **ID.; ID.; ID.; THE WITNESSES OF THE PROSECUTION ARE PRESUMED TO HAVE NOT BEEN ACTUATED BY ILL MOTIVE AND THEIR TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT WHEN THERE IS NO EVIDENCE TO THE CONTRARY.—** Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the present case, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellant. x x x [T]he prosecution witnesses were not only the victims but also the parents of the deceased victims. Being the aggrieved parties, they all desire justice for what had happened to them; thus, it is unnatural for them to falsely accuse someone other than the real culprits. Otherwise stated, it is very unlikely for these prosecution witnesses to implicate an innocent person to the crime. It has been correctly observed that the natural interest of witnesses, who are relatives of the victims, more so, being victims themselves, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.

3. **ID.; ID.; ID.; POSITIVE ASSERTIONS OF PROSECUTION WITNESSES DESERVE MORE CREDENCE AND ARE ENTITLED TO GREATER EVIDENTIARY WEIGHT THAN THE NEGATIVE AVERMENTS OF THE ACCUSED.—** The positive assertions of prosecution witnesses and the negative averments of the accused, the former undisputedly deserve more credence and are entitled to greater evidentiary weight. Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of the criminals at any given time. Hence, as in this case, the proximity and attention afforded the witnesses, coupled with the relative illumination of the surrounding area, bolster the credibility of identification of the accused-appellants.

4. ID.; ID.; ALIBI; TO PROSPER AS A DEFENSE, THE ACCUSED MUST PROVE THAT HE WAS SOMEWHERE ELSE WHEN THE CRIME WAS COMMITTED AND IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO HAVE BEEN AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION.— For alibi to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Denial, like alibi, as an exonerating justification, is inherently weak and if uncorroborated regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. In this case, the defense failed to establish that it was physically impossible for Libre to have been at the scene of the crime at the time of its commission.

5. CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; THE ESSENCE OF TREACHERY IS THE UNEXPECTED AND SUDDEN ATTACK WHICH RENDERS THE VICTIM UNABLE AND UNPREPARED TO PUT UP A DEFENSE.— There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery. In this case, the records show that the attack was well-planned and the series of events that transpired clearly established conspiracy among them. x x x The suddenness and unexpectedness of the assault deprived the victims of an opportunity to resist it or offer any defense of their persons. The victims were unaware that they would be attacked by accused with a hail of bullets from their firearms.

6. ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES.— [T]he prosecution sufficiently established the attending circumstance of evident premeditation. To prove this aggravating circumstance, the prosecution must show the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a lapse of time, between the determination to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act. The fact that they asked Lucy Sabando to lead them to Barte's house, and on a 2-kilometer walk, showed their determination to commit the crime and clung to it all the time they were on the way to Barte's house.

7. ID.; ID.; MURDER AND FRUSTRATED MURDER; COMMITTED IN CASE AT BAR; PENALTIES.— [T]reachery and evident premeditation attended the commission of the crime, qualifying the killing of Barte's children as murder. The court, therefore, affirms the decision of the trial court and the appellate court, in convicting accused-appellant of two (2) separate crimes of murder for the death of Rodel Barte and Joselito Barte. Likewise, accused-appellant is liable for two (2) separate crimes of frustrated murder, the victims Ruben Barte and Renante Barte having survived their wounds due to the timely medical intervention. Had it not been for said medical intervention, Ruben Barte and Renante Barte could have died. x x x Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death. With both penalties being indivisible and there being no aggravating circumstance other than the qualifying circumstances of treachery and evident premeditation, the lower of the two penalties, which is *reclusion perpetua*, was properly imposed on the accused-appellant for each count of murder. However, Libre is not eligible for parole under the provisions of the Indeterminate Sentence Law. As to the frustrated murders, the penalty lesser by one degree shall be imposed on appellant. Thus, the penalty that must be imposed is *reclusion temporal* for each count of frustrated murder. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances other than the qualifying circumstance of treachery and evident premeditation, the maximum penalty shall be taken from the medium period of *reclusion temporal*, which has a range of fourteen (14) years,

eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* in any of its periods, the range of which is from six (6) years, one (1) day to twelve (12) years. The prison term imposed on appellant must, therefore, be modified to six (6) years and one (1) day of *prision mayor* minimum as the minimum penalty to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium as the maximum penalty for each count of frustrated murder.

8. CIVIL LAW; CIVIL CODE; DAMAGES; TEMPERATE DAMAGES; MAY BE AWARDED TO THE VICTIMS' HEIRS EVEN WHEN THE PROSECUTION FAILED TO PROVE THE AMOUNT ACTUALLY EXPENDED FOR MEDICAL, BURIAL AND FUNERAL EXPENSES, AS IT CANNOT BE DENIED THAT THEY SUFFERED PECUNIARY LOSS DUE TO THE CRIME COMMITTED; CASE AT BAR.— [W]hile records do not show that the prosecution was able to prove the amount actually expended for medical, burial and funeral expenses, prevailing jurisprudence nonetheless allows the Court to award temperate damages to the victims' heirs as it cannot be denied that they suffered pecuniary loss due to the crime committed. In conformity with *People v. Ireneo Jugueta*, the Court, however, deems it proper to increase the award of temperate damages from ₱25,000.00 to ₱50,000.00 for uniformity and to further provide aid and financial assistance to the victims.

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

PERALTA, *J.*:

Before this Court is an appeal via Rule 45 from the Decision dated April 27, 2010 of the Court of Appeals in CA-G.R. CR-

HC No. 00089-MIN,[1] affirming *in toto* the Decision dated January 18, 2000 of the Regional Trial Court (*RTC*), Panabo, Davao, Branch 34, convicting appellant Yolando Libre of murder and frustrated murder.

On February 9, 1995, four (4) Informations were filed, accusing accused-appellant Yolando Libre *alias "Nonoy"* and accused Albino Caman and Flora Encabo Vda. de Lumidas of murder and frustrated murder. The Informations alleged –

Criminal Case No. 95-21 for Murder[2]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually helping with one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully (sic), unlawfully and feloniously attack, assault and shoot one Rodel Barte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.

Criminal Case No. 95-22 for Murder[3]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Joselito Barte, thereby inflicting upon him wounds which caused his death, and further causing actual, moral and compensatory damages to the heirs of the victim.

CONTRARY TO LAW.

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[1] Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Leoncia R. Dimagiba and Angelita A. Gacutan, concurring; *rollo,* pp. 4-24.

[2] CA *rollo*, p. 9.

[3] *Id*. at 10.

Criminal Case No. 95-23 for Frustrated Murder[4]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Ruben Barte, thereby inflicting upon him wounds which would have caused his death, thus the accused performed all the acts of execution which would have produced the crime of murder, as a consequence but which, nevertheless, did not produce it by reasons of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Ruben Barte, and further causing actual, moral and compensatory damages to the offended party.

CONTRARY TO LAW.

Criminal Case No. 95-25 for Frustrated Murder[5]

That on or about November 25, 1994, in the Municipality of Sto. Tomas, Province of Davao, Philippines, and within the jurisdiction of this Honorable court, the above-named accused, conspiring, confederating and mutually helping one another, with treachery and evident premeditation, with intent to kill, armed with a Garand rifle and a revolver, did then and there wilfully, unlawfully and feloniously attack, assault and shoot one Renante Barte, thereby inflicting upon him wounds which would have caused his death, thus the accused performed all the acts of execution which would have produced the crime of murder, as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Renante Barte, and further causing actual, moral and compensatory damages to the offended party.

CONTRARY TO LAW.

On February 16, 1996, upon arraignment, all three (3) accused pleaded not guilty. Joint trial ensued.

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[4] *Id*. at 11.

[5] *Id*. at 12.

On January 7, 1997, however, during the pendency of these cases, accused Albino Caman while attempting to escape, was shot by provincial prison guards which resulted in his death. Consequently, on January 21, 1997, by reason of his death, the criminal cases against him were dismissed.[6]

The facts are as follows:

In the evening of November 25, 1994, prosecution witness Lucy Sabando *(Lucy*), together with her husband, Edwin, and their child, were visited in their home by three (3) persons, whom she later identified as accused Albino Caman (*Caman*), a member of the Citizen's Armed Forces Geographical Unit (*CAFGU*), accused-appellant Yolando Libre (*Libre*), and accused Flora Encabo (*Encabo*). The three accused told her that they were confused as to the direction of the house of Ruben Barte (*Ruben*), who was known to be a member of the New People's Army (*NPA*). They suddenly pushed the door of her house and ordered them to accompany them to Ruben's house. She noticed that each of them was carrying a firearm. One was a long firearm and the rest were short firearms. Her husband, while carrying their child, was the one who led the group to Ruben's house which was about two (2) kilometers away. Since they were not carrying any lamp, it took them about thirty minutes to reach their destination. In the meantime, while they were walking, accused ordered Lucy to call out Ruben when they reach the latter's house and ask for medicine for her child.[7]

When they reached Ruben's house, Lucy called out asking for medicine for her supposed sick child. Ruben, while holding a lamp, went out of his house to see who was calling.[8] It was then that one of the male accused rushed towards Ruben. Lucy later testified that the one who was carrying a short firearm was the one who rushed towards Ruben. She likewise testified

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[6] *Id*. at 26.

[7] TSN, April 10, 1996, pp. 16-17.

[8] *Id*. at 17.

that immediately after the accused and Ruben started "pulling" each other, she grabbed her husband and ran away. When they were about 250 meters away, she heard several gunshots.

Ruben testified that at about 9 o'clock in the evening of November 25, 1994, while he was inside their house together with his wife and children, he heard a woman's voice asking for medicine for a sick child. He recognized the voice to be that of Lucy. When he opened the door, he was suddenly attacked by accused Caman who was then carrying a gun which he thought was an M-14. He likewise saw accused-appellant Libre bringing a .38 caliber handgun. Caman then shot him at the back and thereafter began firing at his family who were then sleeping. The strafing lasted for about 30 minutes.[9] Meanwhile, immediately after Caman shot Ruben, the latter took cover near their house post and was able to crawl out of the house and escape. While escaping, he heard one of the accused saying "*Buhi pa ba na*?" (Is he still alive") and the other one answered: "*Mabuhi pay pino pa sa bugas*." (an idiom to mean that no one could survive with the strafing).[10] He then went to the house of SPO4 Ernesto Evangelista, which was about a half kilometer away. He told SPO4 Evangelista that they were strafed. He thereafter fell unconscious and was later taken to Tagum for treatment of his injuries.

Ruben likewise testified that he did not know the motive of the attack but he testified that he had previous incident with Yolando Libre who challenged him to a fight with a bolo. He likewise testified that *albeit* he did not know Albino Caman, he knew that the latter was a member of the CAFGU and used to rove around their place. He also knew that Albino Caman and Yolando Libre were *compadres*.[11]

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[9] TSN, November 18, 1996, pp. 5-7.

[10] *Id*. at 8.

[11] TSN (Cross-examination of Ruben Barte), November 18, 1996, pp. 22-25.

SPO4 Ernesto Evangelista testified that at about 9 o'clock in the evening of November 25, 1995, he was awakened by Ruben who informed him that his house was strafed by unidentified persons. While his house was only a half kilometer away from Ruben's, he did not hear the gunfire as he was asleep. He noticed that Ruben was hit and bloody. He then called the police station and requested assistance to investigate the incident. At about 10 o'clock that night, the PNP Group, consisting of about ten police officers, led by the chief of Police, Elmer Royo, went to the crime scene. There they discovered that Juanita had one gunshot wound and several of the children were also hit. They noticed that the house was hit by several bullets and a number of empty shells of Garand rifle and .38 caliber revolver were recovered in the premises. Thereafter, they brought Juanita and the wounded children to the Davao Medical Hospital.[12]

Among the seven children, three (3) were shot. Renante Barte, who was then thirteen (13) years old, was shot in his left buttock and was confined at the Davao Regional Hospital for five (5) days and was recommended by the medical officer for medical attendance for 30-45 days barring complications. Joselito Barte, who was then eleven (11) years old, was pronounced dead on arrival and the cause of death was: "*Hemorrhagic shock sec. to gunshot wound at the right inguinal point of entrance towards the right buttocks point of exit.*" Rodel Barte, who was then 1 year and 3 months old, was likewise hit and the medical finding was: "*gunshot wound buttock, bilateral with massive tissue loss*" and the medical operation performed was a "*wide excision of gunshot buttocks proximal diverting loop colostomy*." He died four (4) days after he was confined in the Davao Regional Hospital.

Juanita Barte testified that when her husband went outside to answer Lucy's call for help, she suddenly heard gunshots and learned that Ruben was hit. She then started crying and shouted: "*Do not shoot us because we have children*" but the firing still continued. So she gathered her children and embraced

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[12] TSN, April 10, 1996, pp. 5-6.

them all. She later identified accused Albino Caman, Yolando Libre, and Flora Encabo as the assailants. She could see their faces because of the lamp which was carried by Ruben. She was wounded on her right leg and right elbow.

For the defense, Flora testified that accused-appellant Libre was her common-law husband and they started living together in 1993. She likewise testified that she did not know Albino Caman and that she only met him in the evening of November 25, 1994. At about 9 o'clock in the evening, Caman allegedly went to their house and asked her husband the directions to the house of Ruben. Her husband allegedly did not want to accompany Caman as it was already dark. Caman got mad, and with "blazing" eyes, poked his gun at Libre and forced them to go out and accompany him to Ruben's house. She knew the Bartes by name and face and she also knew where their house was. While they were walking, they were allegedly pushed by Caman and were allegedly told not to tell anyone including the police. She likewise testified that they did not stop at Ruben's house but instead passed by it as they were allegedly afraid at what Caman might do to Ruben and to them. Then, Caman asked them what place they were in already, and she answered that she did not know. When Caman turned to his left, he saw a lighted house and ordered Flora to wake the people inside. It turned out to be Lucy Sabando's house. As she refused Caman's orders, the latter himself woke the people inside the house and asked for the direction of Ruben Barte's house. Lucy Sabando then woke her husband, who told Caman that he will guide them to Barte's house. Together with Lucy and her husband, they turned back to where they came from to proceed to Ruben's house. She further testified that they could not run as Caman was allegedly holding her shoulder while his gun was pointed at her husband. She further testified that she and her husband ran to the cogon area when the commotion started and it was there that she heard the gunshots.

Yolando Libre, for his part, denied having any participations in the strafing. He testified that he knew Albino Caman as a member of the CAFGU and he used to see him wearing a "fatigue"

uniform and fully packed with firearms. He was not close to Albino Caman and did not have any previous conversation with him. He testified that at around 9 o'clock in the evening of November 25, 1994, Albino Caman went to their house and asked for the directions of Ruben Barte's house. Albino Caman allegedly smelled of liquor and had reddish eyes. Yolando Libre knew Ruben's house, however, he refused to accompany Albino as it was already dark. This seemed to infuriate Albino Caman who then cocked his rifle and poked it at him while commanding them to accompany him to Ruben's house. Libre testified that he intentionally misled Albino Caman and so they were able to proceed to the house of Lucy and Edwin Sabando instead and it was already the latter who led them to Ruben Barte's house. Yolando Libre testified that he was familiar with Barte's house as he always passed by it when gathering firewood. He however denied having a grudge against him.

On January 18, 2000, the court *a quo* rendered its Decision,[13] to wit:

> Wherefore, the Court sentences the accused Yolando Libre, to suffer the following penalties.
>
> In Crim. Case No. 95-21, he is sentenced to suffer the penalty of reclusion perpetua and is ordered to pay the heirs of Rodel Barte the sum of ₱50,000.00 for indemnity ex delicto and ₱50,000.00 for moral damages and ₱50,000.00 for exemplary damages.
>
> In Crim Case No. 95-22, he is sentenced to suffer the penalty of reclusion perpetua and is directed to pay the heirs of Joselito Barte the sum of ₱50,000.00 as indemnity ex delicto, moral damages of ₱50,000.00 and exemplary [damages] of ₱50,000.00.
>
> In Crim. Case No. 95-23, he is sentenced to suffer the penalty of imprisonment from 10 years and 8 months to 20 years and to pay Ruben Barte the sum of ₱20,000.00 as indemnity ex delicto, ₱10,000.00 moral damages and ₱10,000.00 as exemplary damages.
>
> In Crim. Case No. 95-25, he is sentenced to suffer the penalty of imprisonment from 10 years and 8 months to 20 years and to pay

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[13] CA *rollo*, pp. 23-47.

Renante Barte the sum of ₱20,000.00 as indemnity ex delicto, ₱10,000.00, [as] moral damages and ₱10,000.00 as exemplary damages.

In all of these cases, he shall also suffer all the accessory penalties provided for by law. He should be credited with the period of his detention pending termination of these cases.

The accused, Flora Encabo, is acquitted in Crim. Cases [No.] 95-21, 95-22, 95-23 and 95-25 for want of proof beyond reasonable doubt as to her.

SO ORDERED.

Accused-appellant Libre appealed before the Court of Appeals.

On April 27, 2010, in its disputed Decision, the Court of Appeals dismissed the appeal for lack of merit and the appealed decision of the trial court was affirmed *in toto*.

Hence, this appeal, with the following issues:

I

THE LOWER COURT GRAVELY ERRED IN FINDING ACCUSED-APPELLANT YOLANDO LIBRE GUILTY BEYOND REASONABLE DOUBT DESPITE THE INSUFFICIENCY OF EVIDENCE AGAINST HIM AND THAT THE EVIDENCE IS WANTING AS TO HIS ALLEGED CONSPIRACY WITH HIS CO-ACCUSED.

II

THE LOWER COURT GRAVELY ERRED IN NOT ACQUITTING ACCUSED-APPELLANT DESPITE THE CONTRADICTORY TESTIMONIES OF THE PROSECUTION WITNESSES.

III

ASSUMING THAT ACCUSED-APPELLANT CONSPIRED WITH CAMAN IN PERPETRATING THE CRIME, THE LOWER COURT GRAVELY ERRED IN APPRECIATING AGAINST ACCUSED-APPELLANT THE CIRCUMSTANCES OF TREACHERY, EVIDENT PREMEDITATION, NIGHTTIME, AND ABUSE OF SUPERIOR STRENGTH.

Appellant claims that the trial court erred in relying on the prosecution witnesses' identification of the perpetrators considering that the affidavits of the witnesses were inconsistent on their identities.

The appeal has no merit.

Time and again, this Court held that when the issues revolve on matters of credibility of witnesses, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is so because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. Moreover, credibility, to state what is axiomatic, is the sole province of the trial court. In the absence of any clear showing that it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have affected the result of the case, as in this case, the trial court's findings on the matter of credibility of witnesses will not be disturbed on appeal.[14]

The affirmance by the Court of Appeals of the factual findings of the trial court places this case under the rule that factual findings are final and conclusive and may not be reviewed on appeal to this Court. No reason has been given by appellant to deviate from the factual findings arrived at by the trial court as affirmed by the Court of Appeals.[15]

Given the foregoing, there is no doubt that prosecution witnesses, Lucy Sabando, Ruben Barte and Juanita Barte, have sufficiently established the identities of appellants as the perpetrators of the strafing incident. It should be noted that two of the prosecution witnesses, *i.e.*, Ruben and Juanita were victims of the strafing. Ruben and Juanita clearly saw the

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[14] *People v. Nelmida*, 694 Phil. 529, 556 (2012). (Citations omitted)

[15] *Id.* at 556-557.

perpetrators with their firearms as there was illumination coming from the lamp carried by Ruben. To wit:

Cross-examination of Ruben Barte by Atty. Evangelio:

Q You said sometime in November 25, 1994 at around 9:30 P.M. there was a person calling your name, is that correct?
A Yes Ma'am.

Q Was that a voice of a woman or a male?
A A woman.

Q And that was the voice of Sabando?
A Yes Ma'am.

Q What is your encounter of Sabando, you are familiar with her voice?
A Because we were just living near.

Q You mean your house are near each other?
A Yes Ma'am.

Q You said you recognize the voice of Lucy Sabando but you did not see her face at that time.
A I know her voice and after that I took the lamp to see her face.

Q And now the lamp you use is a small lamp.
A Yes Ma'am.

Q Lucy Sabando has several companion that time.
A Yes Ma'am.

Q How many are they?
A They were five (5).

Q Do you recognize the faces of those persons.
A Yes Ma'am.

Q And the basis of your seeing the faces is the small lamp?
A Yes Ma'am.

Q But outside your house it was dark.
A Yes Ma'am.

Q Your distance from Lucy Sabando is about 10 to 20 meters.
A Yes Ma'am.

Q What about the other person also 20 meters.
A About 10 meters.

Q And the only way that you recognize was the small lamp.
A When I raised the lamp I recognized their faces.

Q But yet you are still 10 meters away from them.
A We are also near each other like this.

Q You said that several persons were pulling you, is that correct?
A Yes Ma'am.

Q How many are they.
A Three (3) of them.

Q And you were already holding a lamp?
A Yes Ma'am.

Q They were pulling you while you were holding a lamp.
A Yes Ma'am.

Q At the same time your wife also pulling you.
A Yes Ma'am.

Q You still holding the lamp?
A It was already put off.

Q The light was put off before you have seen their faces.

Pros. Gonzales:

Misleading the testimony is – he recognized their faces when the light was already off.

Atty. Evangelio:

Yes, you Honor I withdraw the question.

Q You said that you were being pulled by three (3) persons while your wife was also pulling you, and you were successfully pulled by your wife.
A Yes Ma'am.

Q You already recognize the uniform of the person and not their faces.
A I know the uniform.

Q But the face you are not familiar.
A I know them before.

x x x x x x x x x

Q How did you know that Caman and Libre are compadres?
A They are close to each other and compadres.

Q You said you are neighbors with Caman and Libre, is that correct?
A This Caman and Libre is about 3 meters.

Q And yet you considered as neighbors.
A That the two (2) men are far and only Lucy is my neighbor.

Q You mean to tell us you saw these persons of that incident on November 25, 1994.
A I saw them several times.

Q Tell us in what occasion?
A This Albino is a Cafgu and used to robe.

Q And he used to robe to your place.
A Yes always.

x x x x x x x x x

Q Tell us your relationship with Caman purely an acquaintance.
A We are not close with each other.

Q But you have no disagreement or arguments with each other.
A None.

Q How about Libre do you have an argument?
A We have a grudge with Libre.

Q And it happens when?
A It was long ago.

x x x x x x x x x[16]

Lucy, on cross-examination, testified that while she did not see the faces of the perpetrators who went to their house, she confirmed that the perpetrators were two (2) men and recognized a voice belonging to a woman.[17] Lucy testified that Caman and Libre were each carrying a firearm, a long and short one,

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[16] TSN, November 18, 1996, pp. 16-18; 24, 25.

[17] TSN, April 10, 1996, p. 20.

respectively.[18] Such testimony coincides with Ruben Barte's testimony that Albino Caman was carrying an M-14 rifle, while Yolando Libre carried a .38 caliber handgun.[19] It was likewise established that the police officers found that Ruben Barte's house was hit by several bullets and discovered empty shells of both a Garand rifle and a .38 caliber handgun within the premises, thereby indicating that both guns were fired.

Jurisprudence tells us that where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. In the present case, no imputation of improper motive on the part of the prosecution witnesses was ever made by appellant.[20]

There is no reason to doubt Ruben and Juanita Barte's identification of the accused considering that: *first,* Ruben was carrying a lamp when he went out of their house to answer Lucy's call;[21] s*econd,* He recognized their faces as there was just a distance of 10 meters between Ruben Barte and the perpetrators;[22] *third,* Ruben saw that it was Caman who pulled and shot him at the back and then strafed his house;[23] *fourth,* Ruben likewise saw Libre holding a .38 caliber gun; and, above all, Ruben Barte and Juanita Barte positively identified both Caman and Libre in open court as one of those responsible for the strafing of their house.[24] Such open court declaration is much stronger than their affidavits/sworn statements.[25]

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[18] *Id*. at 16.

[19] TSN, November 18, 1996, pp. 6-7.

[20] *People v. Dadao, et al.*, 725 Phil. 298, 310-311 (2014).

[21] TSN, November 18, 1996, p. 17.

[22] *Id*.

[23] *Id*. at 6.

[24] TSN (Direct Examination of Juanita Barte), March 17, 1997, pp. 5-6; TSN (Direct Examination of Ruben Barte), November 18, 1996.

[25] TSN (Direct Examination of Ruben Barte), November 18, 1996, pp. 4-5.

Again, the prosecution witnesses were not only the victims but also the parents of the deceased victims. Being the aggrieved parties, they all desire justice for what had happened to them, thus, it is unnatural for them to falsely accuse someone other than the real culprits. Otherwise stated, it is very unlikely for these prosecution witnesses to implicate an innocent person to the crime. It has been correctly observed that the natural interest of witnesses, who are relatives of the victims, more so, being victims themselves, in securing the conviction of the guilty would deter them from implicating persons other than the culprits, for otherwise, the culprits would gain immunity.[26]

The positive assertions of prosecution witnesses and the negative averments of the accused, the former undisputedly deserve more credence and are entitled to greater evidentiary weight.[27] Experience dictates that precisely because of the unusual acts of violence committed right before their eyes, eyewitnesses can remember with a high degree of reliability the identity of the criminals at any given time. Hence, as in this case, the proximity and attention afforded the witnesses, coupled with the relative illumination of the surrounding area, bolsters the credibility of identification of the accused-appellants.[28]

Libre's claim that he was not one of the perpetrators considering that he and his wife allegedly left the scene of the crime as soon as they heard gunshots has no ground to stand on. For alibi to prosper, it is not enough to prove that appellant was somewhere else when the crime was committed; he must also demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Unless substantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law. Denial, like alibi, as an exonerating justification, is inherently

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[26] *People v. Nelmida*, *supra* note 14, at 562-563. (Citation omitted)

[27] *People v. Sumilhig*, G.R. No. 178115, July 28, 2014, 731 SCRA 102, 112.

[28] *People v. Piedad*, 441 Phil. 818, 833 (2002).

weak and if uncorroborated regresses to blatant impotence. Like alibi, it also constitutes self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters.

In this case, the defense failed to establish that it was physically impossible for Libre to have been at the scene of the crime at the time of its commission. In fact, Libre testified that he came along with Caman about the same time of the crime, *albeit* on gun-point, but claimed to flee with his wife as soon as gunshots started. Thus, from Libre's testimony, he was within the vicinity of Barte's house about the same time that the crime was committed. To reiterate, for the defense of alibi to prosper, the accused must prove (a) that he was present at another place at the time of the perpetration of the crime, and (b) that it was physically impossible for him to be at the scene of the crime. These, the defense failed to do.

Furthermore, such claim of Libre that they fled as soon as Caman started firing his gun is very easy to concoct in view of Caman's death[29] since the latter can no longer belie his allegation. It must be noted, however, that there were empty shells of .38 caliber revolver and empty shells of garand rifle recovered in the surrounding of the premises where the crime was committed. It could then be inferred that there were at least two (2) guns used in the shooting. It is hard, therefore, to imagine that there was just one perpetrator holding a .38 caliber revolver and a Garand rifle. Thus, Libre's defense of denial and alibi cannot prevail over the witnesses' positive identification of him as one of the perpetrators.

We likewise affirm the findings of both the RTC and the CA that treachery and evident premeditation attended the killing.

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to

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[29] Caman died on January 7, 1997.

insure its execution, without risk to himself arising from the defense which the offended party might make. The essence of treachery is that the attack comes without a warning and in a swift, deliberate, and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape. Otherwise stated, an unexpected and sudden attack which renders the victim unable and unprepared to put up a defense is the essence of treachery.

In this case, the records show that the attack was well-planned and the series of events that transpired clearly established conspiracy among them. *First*, the perpetrators undoubtedly acted in concert as they went to the house of Ruben together, each with his own firearms; *Second,* the perpetrators used Lucy Sabando and her child to trick Ruben and ensure that he will come out of the house clueless to their presence; *Third,* after a moment of struggling, Caman immediately shot Ruben Barte at the back; *Fourth*, perpetrators simultaneously strafed Barte's house for a long period to ensure that those inside the house are likewise killed; *Fifth,* despite Juanita Barte's plea to stop shooting as there were children with them, the shooting continued thus manifesting clear intent to kill; and *Sixth*, when they ceased firing, they rested at the same time and fled together. The suddenness and unexpectedness of the assault deprived the victims of an opportunity to resist it or offer any defense of their persons. The victims were unaware that they would be attacked by accused with a hail of bullets from their firearms. In fact, they were already in bed when Lucy Sabando called for help which prompted Ruben Barte to come out of the house. Hence, the subsequent shooting was deliberate, unexpected, swift and sudden which foreclosed any escape, resistance or defense coming from the victims.

Likewise, the prosecution sufficiently established the attending circumstance of evident premeditation. To prove this aggravating circumstance, the prosecution must show the following: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the offender clung to his determination; and (3) a lapse of time, between the determination

to commit the crime and the execution thereof, sufficient to allow the offender to reflect upon the consequences of his act. The fact that they asked Lucy Sabando to lead them to Barte's house, and on a 2-kilometer walk, showed their determination to commit the crime and clung to it all the time they were on the way to Barte's house.

Thus, treachery and evident premeditation attended the commission of the crime, qualifying the killing of Barte's children as murder.[30] The court, therefore, affirms the decision of the trial court and the appellate court, in convicting accused-appellant of two (2) separate crimes of murder for the death of Rodel Barte and Joselito Barte. Likewise, accused-appellant is liable for two (2) separate crimes of frustrated murder, the victims Ruben Barte and Renante Barte having survived their wounds due to the timely medical intervention. Had it not been for said medical intervention, Ruben Barte and Renante Barte could have died.

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[30] Art. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Penalty

Under Article 248 of the Revised Penal Code, the penalty for the crime of murder is *reclusion perpetua* to death.[31] With both penalties being indivisible and there being no aggravating circumstance other than the qualifying circumstances of treachery and evident premeditation, the lower of the two penalties, which is *reclusion perpetua,* was properly imposed on the accused-appellant for each count of murder. However, Libre is not eligible for parole under the provisions of the Indeterminate Sentence Law.[32]

As to the frustrated murders, the penalty lesser by one degree shall be imposed on appellant. Thus, the penalty that must be imposed is *reclusion temporal* for each count of frustrated murder. Applying the Indeterminate Sentence Law and in the absence of modifying circumstances other than the qualifying circumstance of treachery and evident premeditation, the maximum penalty shall be taken from the medium period of *reclusion temporal,* which has a range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* in any of its periods, the range of which is from six (6) years, one (1) day to twelve (12) years. The prison term imposed on appellant must, therefore, be modified to six (6) years and one (1) day of *prision mayor* minimum as the minimum penalty to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium as the maximum penalty for each count of frustrated murder.

On a final note, we could have imposed higher penalties and increased the amount of damages if the prosecution has alleged in the Informations the aggravating circumstance of dwelling, considering that the victims were inside their dwelling when the crimes were committed. Having failed to allege the

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[31] *Id*.

[32] Act No. 4103 (As Amended by Act No. 4225 and Republic Act No. 4203 [June 19, 1965]).

aggravating circumstance of dwelling – an ordinary aggravating circumstance and proven during the trial, the same could not be appreciated to impose higher penalties and increase the amount of damages. Prosecutors are, therefore, enjoined to be more careful and prudent in determining the modifying circumstances that attend the commission of the crimes and in properly alleging the same in the Informations that they file before the courts to better serve the ends of justice.

Awards of Damages

For the two (2) counts of murder, the Court awards to the heirs of the victims; ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. For the two (2) counts of frustrated murder, the Court awards ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages for each victim.[33]

Moreover, while records do not show that the prosecution was able to prove the amount actually expended for medical, burial and funeral expenses, prevailing jurisprudence nonetheless allows the Court to award temperate damages to the victims' heirs as it cannot be denied that they suffered pecuniary loss due to the crime committed.[34] In conformity with *People v. Ireneo Jugueta*,[35] the Court, however, deems it proper to increase the award of temperate damages from ₱25,000.00 to ₱50,000.00 for uniformity and to further provide aid and financial assistance to the victims.

All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Judgment until fully paid.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 00089-MIN, which affirmed the Decision of the Regional Trial Court of Panabo, Davao, Branch 34,

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[33] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[34] *People v. Eugene Samuya*, G.R. No. 213214, April 20, 2015.

[35] *Supra* note 33.

finding appellant Yolando Libre alias "Nonoy" **GUILTY** beyond reasonable doubt of two (2) counts of murder and two (2) counts of frustrated murder, is **AFFIRMED** with **MODIFICATIONS**, as follows:

For the murders of Rodel Barte and Joselito Barte :

(1) Appellant Yolando Libre is sentenced to suffer the prison term of *reclusion perpetua* for each count of murder;

(2) Appellant Yolando Libre is **ORDERED** to **PAY** the heirs of the victims the amount of ₱75,000.00 as civil indemnity for the death of each victim; moral damages in the amount of ₱75,000.00 each, exemplary damages in the amount of ₱75,000.00 each, and ₱50,000.00 as temperate damages, in lieu of actual damages.

For the frustrated murders of Ruben Barte and Renante Barte:

(1) Appellant Yolando Libre is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor* minimum, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* medium, as maximum, for each count of frustrated murder; and

(2) Appellant Yolando Libre is **ORDERED** to **PAY** civil indemnity in the amount of ₱50,000.00, moral damages in the amount of ₱50,000.00, exemplary damages in the amount of ₱50,000.00, and ₱50,000.00 as temperate damages, in lieu of actual damages, to each of the victims.

All damages awarded shall earn interest at the legal rate of six percent (6%) *per annum* from finality of this Judgment until fully paid.

Let a copy of this Decision be furnished the Department of Justice for its information and appropriate action.

Costs against the appellant.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 195072. August 1, 2016]

BONIFACIO DANAN, *petitioner, vs.* **SPOUSES GREGORIO SERRANO and ADELAIDA REYES,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; CONTRACT OF SALE AND CONTRACT TO SELL, DISTINGUISHED.—** Time and again, the Court had ruled that in a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold whereas in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price. In a contract of sale, the vendee's non-payment of the price is a negative resolutory condition, while in a contract to sell, the vendee's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the vendor has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract. Verily, in a contract to sell, the prospective vendor binds himself to sell the property subject of the agreement exclusively to the prospective vendee upon fulfilment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer.

2. **ID.; REPUBLIC ACT NO. 6552 (THE REALTY INSTALLMENT BUYER PROTECTION ACT); CONTRACT TO SELL REAL PROPERTY ON INSTALLMENT BASIS; CANCELLATION OF CONTRACT WHEN LESS THAN TWO YEARS OF INSTALLMENTS WERE PAID; REQUISITES.—** [I]n view of the nature of the agreement herein, a contract to sell real property on installment basis, the provisions of RA No. 6552 must be taken into account insofar as the rights of the parties

in cases of default are concerned. In conditional sales of all kinds of real estate (industrial, commercial, residential), RA No. 6552 not only recognizes the right of the seller to cancel the contract upon non-payment of an installment by the buyer, an event that prevents the obligation of the seller to convey title from acquiring binding force, it also provides for the rights of the buyer in case of such cancellation. x x x [T]he rights of the buyer in the event he defaults in the payment of the succeeding installments depend upon whether he has paid at least two (2) years of installments or less. In the case at hand, it is undisputed that Bonifacio was only able to pay the first ₱2,000.00 installment upon the signing of their agreement, thereafter, failing to pay the balance of the purchase price when they fell due on June 30, 1977 and June 30, 1978. It is, therefore, Section 4 of RA No. 6552 that applies herein. Essentially, the said provision provides for three (3) requisites before the seller may actually cancel the subject contract: *first*, the seller shall give the buyer a sixty (60)-day grace period to be reckoned from the date the installment became due; *second*, the seller must give the buyer a notice of cancellation/demand for rescission by notarial act if the buyer fails to pay the installments due at the expiration of the said grace period; and, *third*, the seller may actually cancel the contract only after thirty (30) days from the buyer's receipt of the said notice of cancellation/demand for rescission by notarial act.

3. ID.; ID.; ID.; ID.; NOTICE OF CANCELLATION; THE ABSENCE OR IMPROPRIETY THEREOF MAY RESULT IN UPHOLDING THE SALE AS VALID, ALTHOUGH BEING SUBJECT TO THE FULL PAYMENT BY THE BUYER OF THE PURCHASE PRICE.— [T]he Court, in multiple occasions, emphasized the importance of the x x x provisions of RA No. 6552 and upheld sales of land as valid and subsisting due to the absence and/or impropriety of the requisite notice of cancellation. x x x Thus, when there is failure on the part of the seller to comply with the requirements prescribed by RA No. 6552 insofar as the cancellation of a contract to sell is concerned, the Court shall not hesitate in upholding the sale, albeit being subject to the full payment by the buyer of the purchase price. x x x In the instant case, there is no showing that the Spouses Serrano complied with the requirements prescribed by RA No. 6552. As the records reveal,

after entering into the sale under the "Agreement in Receipt Form" on June 27, 1976, the Spouses Serrano filed their Complaint for unlawful detainer dated September 10, 1998, attaching therewith the May 1992 document as well as a Notice to Vacate dated April 21, 1998. Jurisprudence dictates, however, that none of these documents constitutes as the requisite "notice of cancellation or demand for rescission by notarial act" mandated by law. In fact, nowhere in the said documents was the sale or its rescission ever mentioned. In their ejectment complaint, the Spouses Serrano merely alleged that on May 6, 1992, they entered into an agreement whereby Bonifacio was to act as caretaker of the subject land and that he shall voluntarily vacate the same within three (3) months from the receipt of a notice to vacate.

4. ID.; ID.; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; AN ACTION TO ENFORCE A WRITTEN CONTRACT PRESCRIBES IN TEN YEARS.— Notwithstanding the failure by the spouses to comply with the cancellation requirements under RA No. 6552, however, Bonifacio's action for specific performance must nonetheless fail on the ground of prescription. x x x In this case, the parties agreed that the purchase price in the total amount of ₱6,000.00 shall be paid in three (3) equal installments on June 27, 1976, June 30, 1977, and finally, on June 30, 1978. Yet, it is undisputed that not only did Bonifacio fail to pay the last two (2) installments, it took him twenty (20) years from the last due date on June 30, 1978 to assert his rights over the property subject of the contract to sell. As borne by the records, Bonifacio filed the instant Complaint for Specific Performance only on November 3, 1998 to oblige the Spouses Serrano to execute the proper Deed of Sale and to cause the transfer of the title over the subject parcel of land. Yet, as categorically ruled in *Manuel Uy*, such action to enforce said written contract herein prescribes in ten (10) years reckoned from the non-fulfillment of the obligation to pay on the last due date. Thus, Bonifacio should have filed the action before June 30, 1988.

APPEARANCES OF COUNSEL

Ernesto M. Andrade for petitioner.
Rolleto T. Arce for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated May 18, 2010 and Resolution[2] dated January 7, 2011 of the Court of Appeals (*CA*) in CA-G.R. CV No. 80277, which reversed and set aside the Decision[3] dated July 22, 2003 of the Regional Trial Court (*RTC*), Branch 50, Guagua, Pampanga.

The factual antecedents are as follows.

Respondents spouses Gregorio Serrano and Adelaida Reyes (*Spouses Serrano*) are the registered owners of a parcel of land consisting of a total area of 23,981 square meters, situated in Sta. Cruz, Lubao, Pampanga, and covered by Original Certificate of Title (*OCT*) No. 6947.[4] Sometime in the years 1940 and 1950, when the property was still co-owned by respondent Gregorio and his siblings, Gregorio's sisters, Marciana and Felicidad, gave petitioner Bonifacio Danan and a certain Artemio Vitug permission to possess 400 square meters each of the total estate and to build their homes thereon in exchange for one cavan of palay every year.[5] Thereafter, in separate documents denominated as "Agreement in Receipt Form"[6] dated June 27, 1976, Gregorio sold to Bonifacio and Artemio their respective 400-square-meter portions of the property. Except for the names of the vendee, both documents uniformly provide as follows:

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring; *rollo*, pp. 22-34.

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

[3] Penned by Judge Gregorio G. Pimentel, Jr.; *id*. at 87-97.

[4] *Id*. at 23.

[5] *Id*.

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

RECEIVED the amount of Two Thousand (₱2,000.00) Pesos, Philippine Currency, as partial payment of the lot I am selling to x x x of Sta. Cruz, Lubao, Pampanga, specifically the portion where his house is presently built, consisting of FOUR HUNDRED (400) SQUARE METERS, situated at Mansanitas, Sta. Cruz, Lubao, Pampanga, declared under Tax Declaration No. 6185 in the Office of the Provincial Assessor, San Fernando, Pampanga. The full consideration of this contract is ₱6,000.00, subject to the following conditions:

1. The amount of ₱2,000.00 should be paid by x x x to the undersigned vendor upon the signing of this contract.

2. The amount of ₱2,000.00 should be paid to the vendor at his residence at Sta. Cruz, Lubao, Pampanga, on or before June 30, 1977.

3. The last instalment of ₱2,000.00 should be paid to the vendor at his abovementioned residence on or before June 30, 1978.

4. That on July 2, 1976, Mr. Gregorio Serrano, the herein vendor will execute a document (Deed of Conditional Sale) incorporating the herein stipulations.

It is further agreed that in June 1978, upon the completion of the full payment of the agreed price, the herein vendor will deliver to the vendee a title corresponding to the lot or portion sold.

It is further agreed that any violation of the stipulations herein stated will entitle the innocent or aggrieved party a right to ask for damages.[7]

While Bonifacio and Artemio paid the ₱2,000.00 upon the signing of the Agreement, they were both unable to pay the balance of the purchase price when they fell due on June 30, 1977 and June 30, 1978. Nevertheless, they remained in possession of their respective lots.[8]

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[7] *Id*. (Emphasis supplied)

[8] *Id*. at 24.

In a Complaint[9] dated September 10, 1998, the Spouses Serrano, through their son and attorney-in-fact, Arnel Francisco Serrano, instituted ejectment proceedings against Bonifacio and Artemio, alleging: (1) that they are the owners of the subject properties; (2) that Bonifacio and Artemio were merely caretakers thereof; and (3) that demand was made for the latter to vacate, but to no avail. Thus, they prayed that Bonifacio and Artemio be ordered to vacate the premises and to pay monthly rentals and attorney's fees. The complaint, however, was dismissed on the ground of lack of jurisdiction by the Municipal Trial Court (*MTC*) of Lubao, Pampanga, in its Decision[10] dated February 26, 1999.

Meanwhile, in a Complaint[11] for specific performance dated November 3, 1998, Bonifacio and Artemio alleged that they purchased their respective portions of land via the Agreement in Receipt Form[12] dated June 27, 1976 and since then, stopped paying the yearly rental of one cavan of *palay*.[13] While they admitted to their failure to pay the remaining balance of the purchase price in the amount of ₱4,000.00, they claimed that such was due to the continuous absence of the Spouses Serrano. Despite their ability and willingness to pay the aforesaid amount, however, Bonifacio and Artemio were shocked to have found that as early as September 1994, the Spouses Serrano had already obtained the title over the subject properties in their names. According to Bonifacio and Artemio, Gregorio intentionally deceived them into signing the documents in May 1992 purportedly intended to facilitate the processing and issuance of their titles over their respective portions of land but which turned out to be a declaration that they were merely caretakers of the same.[14] Said documents were eventually used for the

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[9] *Id*. at 38-43.

[10] Penned by Judge Carlos S. Bartolo; *id*. at 63-68.

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

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

[13] *Id*. at 70.

[14] *Id*. at 71.

ejectment case against them. Thus, Bonifacio and Artemio prayed that judgment be rendered ordering the Spouses Serrano to sign, execute, and deliver the proper deed of sale, together with the corresponding titles over the portions of land in their favor, declaring the documents in May 1992 as null and void, and awarding moral damages, exemplary damages, attorney's fees and litigation expenses.[15]

In their Answer,[16] respondents spouses asserted that they are the owners of the subject properties; that the possession thereof by Bonifacio and Artemio are merely by tolerance; and, that the Agreements in Receipt Form dated June 27, 1976 are mere contracts to sell, of which failure by the vendees to fully pay the price agreed thereon prevents the transfer of ownership from the vendor to the vendees.[17] As special and administrative defenses, the Spouses Serrano raised prescription, alleging that any right of action, if any, arising from the agreements dated June 27, 1976, had long prescribed when the complaint was filed in 1998. The Spouses Serrano likewise raised the defense of laches on the part of Bonifacio and Artemio for their neglect to assert their right for an unreasonable and unexplained length of time.[18] As their counterclaim, moreover, the Spouses Serrano claimed to be entitled to the payment of monthly rentals in the amount of ₱3,000.00, moral damages, exemplary damages, and attorney's fees.[19]

In its Decision dated July 22, 2003, the RTC granted the Complaint of Bonifacio and Artemio and ordered the Spouses Serrano to execute and sign the proper Deed of Sale, deliver the corresponding titles after receiving the ₱4,000.00 balance, and pay consequent moral and exemplary damages and attorney's

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[15] *Id*. at 73.

[16] *Id*. at 81-86.

[17] *Id*. at 25.

[18] *Id*.

[19] *Id*. at 85.

fees.[20] According to the trial court, the acceptance of a down payment means that the contract is no longer executory but partly executed, removing the same from the coverage of the Statute of Frauds. Thus, Bonifacio and Artemio should be allowed to file an action for specific performance of their partially executed contract with the Spouses Serrano. Moreover, the RTC found that the spouses took advantage of the low educational background of Bonifacio and Artemio, and persuaded them into believing that the May 1992 documents were intended to facilitate the issuance of their titles over their respective portions of land but were actually the very documents that were used as the basis for the filing of the ejectment suit against them.[21] As to the non-payment of the ₱4,000.00 balance, the trial court sustained the reasoning of Bonifacio and Artemio that despite the fact that they were more than willing to pay the same, they were sufficiently prevented from doing so because of the continued absence of the Spouses Serrano, who were busy trying to gain their US citizenship abroad.[22]

In its Decision dated May 18, 2010, however, the CA reversed and set aside the RTC Decision finding that the trial court seemed to have failed to properly determine the true nature of the agreement between the parties for being primarily impelled by supposed impulses of equity, stressing that Bonifacio and Artemio were allegedly unschooled and easily induced by the wealthy spouses.[23] It ruled that while equity might tilt on the side of one party, the same cannot be enforced so as to overrule a positive provision of law in favor of the other. According to the appellate court, the provisions of the "Agreement in Receipt Form" clearly show that the parties agreed on a conditional sale and not an absolute sale as Bonifacio and Artemio would like to believe. This is because by the express terms of the agreement, the title

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[20] *Id*. at 97.

[21] *Id*. at 95.

[22] *Id*. at 96.

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

was reserved and remained with the Spouses Serrano, to be transferred only when Bonifacio and Artemio paid the last installment of the purchase price in June 1978. If it were indeed an absolute sale, Bonifacio and Artemio would not have prayed in their complaint that a proper deed of sale, together with the corresponding title over the subject properties, be signed, executed and delivered. Indeed, compliance with the stipulated payments was a suspensive condition and the failure by Bonifacio and Artemio thereof prevented the obligation of the Spouses Serrano to convey the title from acquiring binding force. Thus, the parties now stand as if the conditional obligation never existed.[24]

Moreover, contrary to the findings of the trial court, the appellate court did not find any merit in the reasoning of Bonifacio and Artemio that despite the fact that they were more than willing to pay the balance of the purchase price, they were sufficiently prevented from doing so because of the continued absence of the Spouses Serrano. While it is true that the spouses were abroad at times, they were not absent from the Philippines for long periods of time, returning to the country every year. In fact, Gregorio testified that he went to see Bonifacio and Artemio personally to collect the amounts on the due dates, but was told that they did not have the money to pay.[25] At any rate, the appellate court held that the absence of the vendor at the time of the stipulated dates does not relieve the vendee of his obligation to pay for under Article 1256 of the New Civil Code, consignation is the proper remedy. Thus, contrary to Bonifacio and Artemio's claims, they were not prevented from complying with their obligation to pay for if they were really willing to pay, they could have consigned the amounts in court. Considering, therefore, that Bonifacio and Artemio failed to pay the purchase price in accordance with their agreement, they had no right to compel the Spouses Serrano to sell the subject properties to them.

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[24] *Id*. at 31.

[25] *Id*.

When his Motion for Reconsideration was denied by the CA in its Resolution dated January 7, 2011, Bonifacio filed the instant petition invoking the following arguments:

I.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER DID NOT HAVE A CAUSE OF ACTION AGAINST THE RESPONDENT SPOUSES SERRANO.

II.

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT PETITIONER CANNOT DEMAND RESPONDENT SPOUSES SERRANO TO TRANSFER THE SUBJECT PROPERTY BECAUSE OF HIS FAILURE TO COMPLY WITH THE SUSPENSIVE CONDITION OF FULL PAYMENT OF THE PURCHASE PRICE.

III.

THE COURT OF APPEALS ERRED IN GRANTING RESPONDENT SPOUSES SERRANO'S COUNTERCLAIM.

In the instant petition, Bonifacio argues that since he did not receive any formal demand from the Spouses Serrano, he did not incur delay. Consequently, he cannot be said to have violated any of their rights, which means, therefore, that the prescriptive period does not begin to run against him. In addition, Bonifacio also raises the provisions of Republic Act *(RA)* No. 6552, otherwise known as the *Realty Installment Buyer Protection Act,* insofar as his rights as a buyer of real property are concerned. In response, the Spouses Serrano reiterated the ruling of the CA that due to the fact that their agreement was merely a contract to sell, their obligation to transfer the title of the subject parcel of land did not arise as a result of Bonifacio's failure to fully pay the purchase price.

At the onset, the Court concurs with the CA's finding that the nature of the agreement between the parties in this case is one that is akin to a contract to sell. Time and again, the Court had ruled that in a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold whereas

in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price. In a contract of sale, the vendee's non-payment of the price is a negative resolutory condition, while in a contract to sell, the vendee's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the vendor has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the vendor if the vendee does not comply with the condition precedent of making payment at the time specified in the contract.[26] Verily, in a contract to sell, the prospective vendor binds himself to sell the property subject of the agreement exclusively to the prospective vendee upon fulfilment of the condition agreed upon which is the full payment of the purchase price but reserving to himself the ownership of the subject property despite delivery thereof to the prospective buyer.[27]

A cursory reading of the "Agreement in Receipt Form" would readily reveal that the same is a contract to sell and not a contract of sale. As expressly stipulated therein, the parties "agreed that in June 1978, upon the completion of the full payment of the agreed price, the herein vendor will deliver to the vendee a title corresponding to the lot or portion sold."[28] Clearly, the title to the property was to remain with the Spouses Serrano, to pass only to Bonifacio until his full payment of the purchase price. As pointed out by the appellate court, if the agreement was one of absolute sale, Bonifacio would not have prayed in his complaint that a proper deed of sale, together with the corresponding title over the subject properties, be signed, executed and delivered.

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[26] *Heirs of Paulino Atienza v. Espidol,* 642 Phil. 408, 416 (2010).

[27] *Optimum Development Bank v. Spouses Jovellanos*, G.R. No. 189145, December 4, 2013, 711 SCRA 548, 559.

[28] *Rollo*, p. 61.

It is imperative to note, however, that in view of the nature of the agreement herein, a contract to sell real property on installment basis, the provisions of RA No. 6552 must be taken into account insofar as the rights of the parties in cases of default are concerned. In conditional sales of all kinds of real estate (industrial, commercial, residential), RA No. 6552 not only recognizes the right of the seller to cancel the contract upon non-payment of an installment by the buyer, an event that prevents the obligation of the seller to convey title from acquiring binding force, it also provides for the rights of the buyer in case of such cancellation.[29] Its salient provisions provide:

> Sec. 3. In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants under Republic Act Numbered Thirty-eight hundred forty-four, as amended by Republic Act Numbered Sixty-three hundred eighty-nine, where the buyer has paid at least two years of installments, **the buyer is entitled to the following rights in case he defaults in the payment of succeeding installments:**
>
> (a) To pay, without additional interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any.
>
> (b) If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made and, after five years of installments, an additional five percent every year but not to exceed ninety percent of the total payments made: Provided, That the actual cancellation of the contract shall take place after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act and upon full payment of the cash surrender value to the buyer.

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[29] *Planters Development Bank v. Chandumal*, 694 Phil. 411, 424 (2012).

Down payments, deposits or options on the contract shall be included in the computation of the total number of installments made.

Sec. 4. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than sixty days from the date the installment became due. If the buyer fails to pay the installments due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act.[30]

Thus, the rights of the buyer in the event he defaults in the payment of the succeeding installments depend upon whether he has paid at least two (2) years of installments or less. In the case at hand, it is undisputed that Bonifacio was only able to pay the first ₱2,000.00 installment upon the signing of their agreement, thereafter, failing to pay the balance of the purchase price when they fell due on June 30, 1977 and June 30, 1978. It is, therefore, Section 4 of RA No. 6552 that applies herein. Essentially, the said provision provides for three (3) requisites before the seller may actually cancel the subject contract: *first,* the seller shall give the buyer a sixty (60)-day grace period to be reckoned from the date the installment became due; *second,* the seller must give the buyer a notice of cancellation/demand for rescission by notarial act if the buyer fails to pay the installments due at the expiration of the said grace period; and, *third,* the seller may actually cancel the contract only after thirty (30) days from the buyer's receipt of the said notice of cancellation/demand for rescission by notarial act.[31]

Accordingly, the Court, in multiple occasions, emphasized the importance of the foregoing provisions of RA No. 6552 and upheld sales of land as valid and subsisting due to the absence and/or impropriety of the requisite notice of cancellation. In *Pagtalunan v. Dela Cruz Vda. de Manzano*,[32] for instance, the

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[30] Emphasis supplied.

[31] *Optimum Development Bank v. Spouses Jovellanos*, *supra* note 27.

[32] 559 Phil. 658 (2007).

Court ordered the seller to transfer the title to the buyer upon the latter's payment of the balance of the purchase price because of the invalidity of the seller's cancellation of their contract. Contrary to the seller's contention, the letter he sent demanding the buyer to vacate the premises due to the latter's failure to pay did not sufficiently conform to the conditions imposed by law. What is required, the Court explained, is a "notice of cancellation or demand for rescission by notarial act," which is not the same as a demand letter. In another instance, the Court, in *Spouses Ramos v. Spouses Heruela*,[33] held that in view of the absence of the requisite notice of cancellation, as well as a demand for rescission by notarial act to the buyer, the contract to sell remained effective. Consequently, said buyer had not lost the statutory grace period within which to pay the remaining installments even after the date stipulated in their agreement. The Court added that the action for reconveyance of property filed by the seller cannot be deemed the same as an action for rescission.

Thus, when there is failure on the part of the seller to comply with the requirements prescribed by RA No. 6552 insofar as the cancellation of a contract to sell is concerned, the Court shall not hesitate in upholding the sale, albeit being subject to the full payment by the buyer of the purchase price.[34] In fact, in *Fabrigas v. San Francisco del Monte, Inc.*,[35] the Court even went as far as nullifying a clause in a contract providing for automatic rescission immediately upon default of the buyer notwithstanding the statutory grace periods permitted by the Act.

In the instant case, there is no showing that the Spouses Serrano complied with the requirements prescribed by RA No. 6552.

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[33] 509 Phil. 658, 669 (2005).

[34] *Planters Development Bank v. Chandumal, supra* note 29; *Solid Homes, Inc. v. Laserna, et al.*, 574 Phil. 69, 89 (2008).

[35] 512 Phil. 627, 637 (2005), citing Section 7, in relation to Section 4 of RA No. 6552.

As the records reveal, after entering into the sale under the "Agreement in Receipt Form" on June 27, 1976, the Spouses Serrano filed their Complaint for unlawful detainer dated September 10, 1998, attaching therewith the May 1992 document as well as a Notice to Vacate dated April 21, 1998. Jurisprudence dictates, however, that none of these documents constitutes as the requisite "notice of cancellation or demand for rescission by notarial act" mandated by law.[36] In fact, nowhere in the said documents was the sale or its rescission ever mentioned. In their ejectment complaint, the Spouses Serrano merely alleged that on May 6, 1992, they entered into an agreement whereby Bonifacio was to act as caretaker of the subject land and that he shall voluntarily vacate the same within three (3) months from the receipt of a notice to vacate.[37]

Notwithstanding the failure by the spouses to comply with the cancellation requirements under RA No. 6552, however, Bonifacio's action for specific performance must nonetheless fail on the ground of prescription.

In *Manuel Uy & Sons, Inc. v. Valbueco, Incorporated*,[38] the parties therein entered into conditional deeds of sale on November 29, 1973, which provided that the buyer shall pay the last installment of the purchase price on November 15, 1974. The buyer, however, failed to pay said installment. On March 16, 2001, or twenty-seven (27) years thereafter, the buyer filed an action for specific performance seeking to compel the seller to accept the balance of the purchase price and to execute the corresponding deeds of absolute sale. The Court, however, affirmed the action's dismissal in the following wise:

> x x x The Complaint shows that the Conditional Deeds of Sale were executed on November 29, 1973, and payments were due on both Conditional Deeds of Sale on November 15, 1974. Article 1144 of the Civil Code provides that actions based upon a written contract

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[36] *Pagtalunan v. Dela Cruz Vda. de Manzano, supra* note 32.

[37] *Rollo*, pp. 38-40.

[38] 717 Phil. 711 (2013).

must be brought within ten years from the time the right of action accrues. **Non-fulfillment of the obligation to pay on the last due date, that is, on November 15, 1974, would give rise to an action by the vendor, which date of reckoning may also apply to any action by the vendee to determine his right under R.A. No. 6552.** The vendee, respondent herein, filed this case on March 16, 2001, which is clearly beyond the 10-year prescriptive period; hence, the action has prescribed.[39]

In this case, the parties agreed that the purchase price in the total amount of ₱6,000.00 shall be paid in three (3) equal installments on June 27, 1976, June 30, 1977, and finally, on June 30, 1978. Yet, it is undisputed that not only did Bonifacio fail to pay the last two (2) installments, it took him twenty (20) years from the last due date on June 30, 1978 to assert his rights over the property subject of the contract to sell. As borne by the records, Bonifacio filed the instant Complaint for Specific Performance only on November 3, 1998 to oblige the Spouses Serrano to execute the proper Deed of Sale and to cause the transfer of the title over the subject parcel of land. Yet, as categorically ruled in *Manuel Uy*, such action to enforce said written contract herein prescribes in ten (10) years reckoned from the non-fulfillment of the obligation to pay on the last due date. Thus, Bonifacio should have filed the action before June 30, 1988.

Furthermore, with respect to the counterclaim of the Spouses Serrano for monthly rentals in the amount of ₱3,000.00 from the time of the filing of their Answer, the Court finds merit in the same. As ruled by the appellate court, it is but fair and legal that rentals be awarded for Bonifacio's possession of the subject property. It is undisputed that he benefited from the use thereof in spite of having only paid the first installment in the amount of ₱2,000.00. Thus, the Court deems it just that monthly rentals be awarded.

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[39] *Manuel Uy & Sons, Inc. v. Valbueco, Incorporated, supra,* at 730. (Emphasis ours)

As to the claim for moral damages, exemplary damages, and attorney's fees, however, the Court resolves to deny the same. On the matter of the spouses' prayer for moral damages, the Court holds that aside from their bare allegations, the Spouses Serrano failed to show compelling reason to warrant the award of the same, considering that the filing alone of a civil action should not be a ground for an award of moral damages in the same way that a clearly unfounded civil action is not among the grounds for moral damages.[40] The same holds true for their claim for exemplary damages in view of the fact that they failed to prove their entitlement to moral, temperate or compensatory damages as required by Article 2234.[41] Similarly, the Court finds that the Spouses Serrano are likewise not entitled to attorney's fees for it is a settled rule that no premium should be placed on the right to litigate and that not every winning party is entitled to an automatic grant of attorney's fees.[42]

Finally, with respect to the first installment paid by Bonifacio to the Spouses Serrano in the amount of Two Thousand Pesos (₱2,000.00), considering that the same only constitutes less than two years of installments, Bonifacio is not entitled to a refund of the same.[43]

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[40] *Spouses Suntay v. Keyser Mercantile, Inc.,* G.R. No. 208462, December 10, 2014, 744 SCRA 645, 662.

[41] Art. 2234.– While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages.

[42] *Spouses Suntay v. Keyser Mercantile, Inc., supra* note 40.

[43] *Manuel Uy & Sons, Inc. v. Valbueco, Incorporated, supra* note 38, at 728.

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated May 18, 2010 of the Court of Appeals in CA-G.R. CV No. 80277 is **AFFIRMED** with **MODIFICATION.** Petitioner Bonifacio Danan is hereby **ORDERED** to **PAY** respondent Spouses Gregorio Serrano and Adelaida Reyes monthly rental in the amount of Three Thousand Pesos (₱3,000.00) with legal interest of Twelve Percent (12%) *per annum* from the time of the filing of respondent spouses' Answer on September 24, 1999 until June 30, 2013 and Six Percent (6%) *per annum* from July 1, 2013 until fully paid. The award of attorney's fees in the amount of Fifty Thousand Pesos (₱50,000.00) is deleted.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 201070. August 1, 2016]

LUZ S. NICOLAS, *petitioner, vs.* **LEONORA C. MARIANO,** *respondent.*

SYLLABUS

1. CIVIL LAW; LAND REGISTRATION; TORRENS SYSTEM; THE TORRENS SYSTEM OF LAND REGISTRATION MERELY CONFIRMS OWNERSHIP AND DOES NOT CREATE IT.— While title to TCT No. C-44249 is in the name of Mariano, she has not completed her installment payments to NHA; this fact is not disputed, and as a matter of fact, Mariano admits it. Indeed, Mariano even goes so far as to concede, in her Comments and Opposition to the Petition, that she is not

the owner of the subject property. Thus, if she never became the owner of the subject property, then she could not validly mortgage and sell the same to Nicolas. The principle *nemo dat quod non habet* certainly applies. x x x Indeed, the Torrens system of land registration "merely confirms ownership and does not create it. It cannot be used to divest lawful owners of their title for the purpose of transferring it to another one who has not acquired it by any of the modes allowed or recognized by law." Nicolas is charged with knowledge of the circumstances surrounding the subject property. The original owner's copy of TCT No. C-44249 is not in Mariano's possession, and the latter could only present a photocopy thereof to her. Before one could part with his money as mortgagee or buyer of real property, it is only natural to demand to be presented with the original owner's copy of the certificate of title covering the same. Secondly, Entry No. 98464/C-39393 on the dorsal side of TCT No. C-44249 constitutes sufficient warning as to the subject property's condition at the time. In other words, TCT No. C-44249 was not a clean title, and if Nicolas exercised diligence, she would have discovered that Mariano was delinquent in her installment payments to the NHA, which in turn would have generated the necessary conclusion that the property belonged to the said government agency.

2. ID.; CIVIL CODE; OBLIGATIONS AND CONTRACTS; WHEN BOTH PARTIES ARE IN *PARI DELICTO*, NEITHER ONE MAY EXPECT POSITIVE RELIEF FROM COURTS OF JUSTICE IN THE INTERPRETATION OF THEIR CONTRACT.— For her part, Mariano cannot recover damages on account of her claimed losses arising from her entering into contract with Nicolas. Realizing that she is not the owner of the subject property and knowing that she has not fully paid the price therefor, she is as guilty as Nicolas for knowingly mortgaging and thereafter selling what is not hers. As correctly held by the CA, both parties herein are not in good faith; they are deemed in *pari delicto* or in equal fault, and for this, "[n]either one may expect positive relief from courts of justice in the interpretation of their contract. The courts will leave them as they were at the time the case was filed." Besides, if Mariano's prayer for damages were to be considered at all, she should have directly assailed the CA's pronouncement by filing her own petition before this Court, which she failed to do.

APPEARANCES OF COUNSEL

Babaran & Associates Law Offices for petitioner.
Perito Malate & Pastores Law Office for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

When both parties are in *pari delicto* or in equal fault, none of them may expect positive relief from the courts in the interpretation of their agreement; instead, they shall be left as they were at the time the case was filed.

This Petition for Review on *Certiorari*[1] assails the Court of Appeals' (CA) June 21, 2011 Decision[2] and March 1, 2012 Resolution[3] denying herein petitioner's Motion for Partial Reconsideration[4] in CA-G.R. CV No. 93532.

Factual Antecedents

The CA's summation of the facts is hereby adopted, thus:

The subject of the instant controversy is the one-half portion of a 155-square meter parcel of land known as Lot 13-A, Block 40 located at 109 Kapayapaan Street, Bagong Barrio, Caloocan City and covered by *Transfer Certificate of Title No. (TCT) No. C-44249*. The parcel of land is part of the National Housing Authority's (NHA) Bagong Barrio Project and built thereon is plaintiff-appellee Leonora Mariano's[5] five-unit apartment which she leases out to tenants.

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[1] *Rollo*, pp. 3-35.

[2] *Id*. at 37-49; penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Ricardo R. Rosario and Danton Q. Bueser.

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

[4] *Id*. at 143-154.

[5] Herein respondent.

In 1972, Leonora Mariano filed with the NHA *Application No. 99-02-0323* for a land grant under the Bagong Barrio Project. In 1978, the NHA approved the *Application*, thus, her institution as grantee of the foregoing parcel of land. The grant, however, is subject to a mortgage inscribed as *Entry No. 98464/C-39393* on the dorsal side of *TCT No. C-44249, viz[.]*:

> — NATIONAL HOUSING AUTHORITY –
>
> TO GUARANTEE A PRINCIPAL X X X (illegible) IN THE SUM OF ₱36,036.10 PAYABLE WITHIN TWENTY FIVE (25) YEARS WITH ANNUAL INTEREST OF TWELVE (12%) PERCENT UNTIL FULLY PAID IN THREE HUNDRED (300) EQUAL MONTHLY INSTALLMENTS.x x x
>
> DATE OF INSTRUMENT – Feb. 12, 1981
>
> DATE OF INSCRIPTION – May 8, 1981

and further subject to a *proviso*, proscribing any transfer or encumbrance of said parcel of land, *viz[.]*:

> "EXCEPT BY HEREDITARY SUCCESSION, THE HEREIN LOT OR ANY PART THEREOF CANNOT BE x x x (illegible), TRANSFERRED, OR ENCUMBERED WITHIN FIVE (5) YEARS FROM THE DATE OF RELEASE OF THE MORTGAGE INSCRIBED AT THE BACK HEREOF WITHOUT PRIOR WRITTEN CONSENT AND AUTHORITY FROM THE NATIONAL HOUSING AUTHORITY."

Accordingly, the NHA withheld conveyance of the original *TCT No. C-44249* to Leonora Mariano, furnishing her instead a photocopy thereof as the issuance of the original *TCT* in her name is conditioned upon her full payment of the mortgage loan. Leonora Mariano's last payment was in February 1999. The NHA's *Statement of Account* indicates that as of September 30, 2004, Leonora Mariano's outstanding obligation amounted to ₱37,679.70. Said obligation remained unpaid.

On January 28, 1998, Leonora Mariano obtained a ₱100,000.00 loan from defendant-appellant Luz Nicolas[6] with a payment term of ten (10) months at the monthly interest rate of 7%. To secure the loan, she executed a *Mortgage Contract* over the subject property, comprising the one-half portion of the parcel of land.

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[6] Herein petitioner.

On February 22, 1999, Leonora Mariano, having defaulted in the payment of her obligation, executed in favor of Luz Nicolas a second mortgage deed denominated as *Sanglaan ng Lupa at Bahay*, this time mortgaging the subject property and the improvements thereon for a consideration of ₱552,000.00 inclusive of the original loan of ₱100,000.00. The *Sanglaan ng Lupa at Bahay* provides for a payment term of one (1) year and contains the following stipulations:

x x x x x x x x x

1. Na kung sakali at mabayaran ng UNANG PANIG ang IKALAWANG PANIG o ang kahalili nito ang nabanggit na pagkakautang na halagang Limang Daan Limamput Dalawang Libong Piso (₱552,000.00), salaping Pilipino, kasama ang interes o tubo, sa loob ng taning na panahon, ay mawalan ng bisa at saysay ang SANGLAANG ito;

2. **Na kapag hindi nabayaran ng UNANG PANIG sa IKALAWANG PANIG ang buong halagang pagkakautang na nabanggit sa itaas, ay itituring ng ma[g]kabilang panig na ang lupa at bahay na nakasangla ay nabili at pagmamay-ari na ng IKALAWANG PANIG at sumasang-ayon ang UNANG PANIG na magsagawa ng kaukulang Kasulatan ng Bilihan na wala nang karagdagang bayad o halagang ibinibigay sa nagsangla.**

x x x x x x x x x

On June 7, 2000, Leonora Mariano, similarly defaulting on the second obligation, executed a deed of *Absolute Sale of Real Property*, conveying to Luz Nicolas the ownership of the subject property and the improvements thereon for a purchase price of ₱600,000.00. A document denominated *Pagtanggap ng Kabuang Halaga*, executed before Punong Barangay Crispin C. Peña, Sr. attested to the full payment of the ₱600,000.00 to Leonora Mariano. It appears that from June 1999, the tenants of Leonora Mariano's five-unit apartment have been remitting monthly rentals to Luz Nicolas in the amount of ₱2,000.00, or ₱10,000.00 in the aggregate. From said period until June 2004, Luz Nicolas' rental collection amounted to ₱600,000.00.[7] (Emphasis in the original)

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[7] *Rollo*, pp. 37-40.

Ruling of the Regional Trial Court

On July 8, 2004, Leonora C. Mariano (Mariano) sued Luz S. Nicolas (Nicolas) before the Regional Trial Court of Caloocan City (RTC). In her Amended Complaint[8] for "Specific Performance with Damages and with Prayer for the Issuance of a Temporary Restraining Order and thereafter a Permanent Mandatory Injunction" before RTC Branch 121, Mariano sought to be released from the second mortgage agreement and stop Nicolas from further collecting upon her credit through the rentals from her apartments, claiming that she has fully paid her debt. In addition, she prayed for other actual damages, moral damages, attorney's fees, and injunctive relief.

In her Answer,[9] Nicolas denied that she collected rentals from Mariano's apartments; that Mariano's debt remained unpaid; that the subject property and the improvements thereon were later sold to her via a deed of absolute sale executed by Mariano which, however, did not bear the written consent of the latter's husband; and that as a result of the sale, she obtained the right to collect the rentals from the apartment tenants. Nicolas thus prayed that Mariano be ordered to surrender the title to the subject property to her, and to pay her moral and exemplary damages and costs.

After trial, the trial court issued its Decision[10] in Civil Case No. C-20937 dated August 26, 2009, decreeing as follows:

> The Court is inclined to believe that what had been entered into by and between the parties was a mere contract of mortgage of real property and not a sale of real property.
>
> The Court could not uphold the validity of the Deed of Absolute Sale of Real Property dated June 7, 2000 because it is tainted with flaws and defects. There is no evidence that the parties have given their consent thereto. A careful scrutiny of the document will readily show that at the time of the execution thereof there was no consideration

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[8] *Id*. at 56-64.

[9] *Id*. at 69-75.

[10] *Id*. at 79-93.

for the sale of the property. The alleged vendor, plaintiff herein, made it appear that she received the sum of Php600,000.00 in full and in her complete satisfaction from the alleged vendee, herein defendant. The lack of consideration was likewise bolstered by the defendant's production of the handwritten memorandum or note of the various amounts allegedly received by the aforesaid defendant from the plaintiff on different occasions. It is important to stress, however, that even admitting arguendo that several amounts were received by the plaintiff from the defendant, there has not been any indication that the same were intended as consideration for the sale of the property in question. x x x It has been observed also that the alleged payments occurred long after the execution of the Deed of Sale, or a span of four (4) months to be more exact. No less than the barangay captain had categorically declared that he did not see that the defendant even handed over the amount of Php600,000.00 to the plaintiff. Moreover, a scrutiny of the aforesaid fictitious Deed of Absolute Sale of Real Property will readily show that it did not even specifically described [sic] the subject-matter of the alleged sale.

There are two sets of mortgage contracts executed by the parties herein. One in the amount of Php100,000.00 with an interest of 7% payable in ten (10) month period and the other one in a jacked up price of Php552,000.00 payable within a period of one (1) year from its execution. The plaintiff's contention that the unpaid obligation in the amount of Php100,000.00 has already been consolidated to the jacked up amount of Php552,000.00 is tenable. Anent the claim of the defendant that the plaintiff never paid her, such alleged failure however could not be attributed to the fault of the plaintiff considering that the latter had been tendering her payments not only once but for several times and it was the defendant who refused to accept the payments for various reasons. It is crystal clear that the defendant's refusal to accept the payments which were tendered by the plaintiff was nothing but a malicious scheme devised by the defendant to make the plaintiff's obligation ballooned [sic] to Php552,000.00, which would make it more difficult for the plaintiff to pay the increased amount of Php552,000.00 in lump sum. The actuations displayed by the defendant is indeed a downright manifestation of bad faith on her part in her desire to own the property belonging to herein plaintiff, which is in brazen violation of Article 19 of the Civil Code, which provides among others that 'Every person must in the exercise of his right and in the performance of his duties act with justice, give everyone his due and observe honesty and good faith.' Be that as

it may, the plaintiff, despite her vigorous protestation to the jacked up amount of Php552,000.00 had agreed to sign the second mortgage denominated as '*Sanglaan Ng Bahay At Lupa*' payable within a period of one (1) year. Apparently, the defendant's consuming aspiration to push the plaintiff against the wall, had even accentuated when she demanded payment of the aforestated sum from the herein plaintiff even before its maturity.

It is important to stress however, that in plaintiff's sincere desire to settle her obligation, upon request of the defendant, had even executed a Special Power of Attorney in favor of the latter, authorizing the aforesaid defendant to collect the rentals from the five-door apartment belonging to the plaintiff, which commenced from June 1999 up to June 2004. Although the defendant assured the plaintiff that the payments by way of rentals would be applied to the indebtedness of the plaintiff, such verbal agreement was never reduced in writing in view of the trust and confidence reposed by the plaintiff upon the defendant.

In sum, the defendant was able to collect the total amount of Php612,000.00 from the tenants of the plaintiff, which evidently tremendously exceeded the amount of the alleged indebtedness of the plaintiff to the defendant in the increased amount of Php552,000.00.

x x x x x x x x x

There is no doubt that the plaintiff has suffered mental anguish and injury due to the wrongful act done by the defendant against the plaintiff. Hence, the latter is entitled to an award of moral damages inasmuch as the sufferings and injuries suffered by the plaintiff are the proximate result of the defendant's wrongful act or omission (*Art. 2217, Civil Code of the Philippines*). However, the amount of moral damages suffered by the plaintiff in the amount of Php400,000.00 is unconscionable which must have to be reduced by the court.

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant by:

1. Ordering the cancellation of the two (2) mortgages denominated as Mortgage Contract and the *Sanglaan Ng Lupa At Bahay*, thus releasing the plaintiff from her obligation relative thereto;

2. Ordering the defendant, to stop collecting further monthly rentals on the five-door apartment belonging to the plaintiff from the tenants of the latter; and,

3. To pay moral damages in the amount of Php100,000.00, and,

4. To pay the costs of suit.

SO ORDERED.[11]

Ruling of the Court of Appeals

Nicolas filed an appeal before the CA, docketed as CA-G.R. CV No. 93532. In its assailed June 21, 2011 Decision, however, the CA ruled against Nicolas, stating thus:

Aggrieved, Luz Nicolas interposed this appeal, raising the following assignment of errors:

I

THE TRIAL COURT ERRED IN DECLARING THE DEED OF SALE AS NULL AND VOID FOR LACK OF CONSIDERATION;

II

THE TRIAL COURT ERRED IN RELEASING THE APPELLEE FROM HER OBLIGATION TO THE APPELLANT AND CANCELING THE TWO MORTGAGES; [*and*]

III

THE TRIAL COURT ERRED IN AWARDING THE APPELLEE MORAL DAMAGES AND COST OF SUIT.

The pivotal issue in this appeal is whether x x x the RTC committed reversible error in (1) declaring the *Absolute Sale of Real Property* invalid, (2) cancelling the *Mortgage Contract* and *Sanglaan ng Lupa at Bahay*, and (3) awarding moral damages to Leonora Mariano.

x x x x x x x x x

Luz Nicolas maintains that the *Absolute Sale of Real Property* is valid on the grounds: (1) that the same is Leonora Mariano's free and voluntary act in settlement of her mortgage liability of ₱552,000.00; (2) it pertains to the subject property for the valid consideration of ₱600,000.00, ₱552,000.00 of which Leonora Mariano had already

[11] *Id*. at 91-93.

received by way of the mortgage debt; and (3) that the *Pagtanggap ng Kabuuang Halaga* is conclusive evidence of Leonora Mariano's full receipt of the ₱600,000.00. She further avers that the RTC erred in declaring Leonora Mariano's release from liability on the basis of the purported special power of attorney, contending that the special power was never formally offered in evidence and that assuming *arguendo* it exists, the *Absolute Sale of Real Property* superseded the same, making her rental collection one in the concept of an owner. She finally theorizes that the *Absolute Sale of Real Property* novated the mortgage contracts because it converted Leonora Mariano's mortgage obligation of ₱552,000.00 into partial consideration for the subject property and that it is Leonora Mariano who is instead liable for moral damages, having maliciously filed the fraudulent complaint against her who entered into the foregoing contracts in good faith.

For her part, Leonora Mariano, reiterates the grounds raised in her *Motion to Dismiss Notice to Appeal by Expunging* and further avers the appeal is procedurally infirm for non-compliance with Sections 5 and 6, Rule 41 of the Rules of Court. She maintains the propriety of the RTC's *Decision*, stressing that being the trial court's factual conclusion, the same must be accorded great respect x x x.

The appeal is partly meritorious.

x x x x x x x x x

As regards the merits of this appeal, we are one with the RTC in declaring the *Absolute Sale of Real Property* invalid, but we cannot uphold that the invalidity thereof due to lack of the essential requisites of consent, object, and consideration. Indeed, the *Absolute Sale of Real Property* contains all the foregoing requisites and nothing in the records proves, or at least suggests, that the same was executed through fraud or under duress. Hence, by no stretch of the imagination can we sustain the RTC's declaration of invalidity on said ground.

We declare the *Absolute Sale of Real Property* is invalid on the ground that Leonora Mariano, the supposed vendor of the subject property, is not the owner thereof. For a sale to be valid, it is imperative that the vendor is the owner of the property sold. The records show that Leonora Mariano, to debunk Luz Nicolas' claim of ownership of the subject property, openly admitted that she has not fully paid the grant thereof to the NHA. Leonora Mariano, as mere grantee of the subject property who failed to fulfil the conditions of the grant,

never acquired ownership thereof, hence, was without any right to dispose or alienate the same. "*Nemo dat quod non habet*." One cannot give what he does not own. Hence, not being the owner of the subject property, Leonora Mariano could have not transferred the ownership thereof to Luz Nicolas.[12]

Furthermore, the *Absolute Sale of Real Property* is a clear violation of the express *proviso*, prohibiting "any transfer or encumbrance of subject property within five (5)-years from the release of the mortgage." Said violation rendered the *Absolute Sale* void *ab initio*, thus, the Republic's retention of ownership over the subject property.[13] A buyer acquires no better title to the property sold than the seller had. Necessarily, Luz Nicolas cannot invoke the *Absolute Sale* as basis of her right to collect rentals.

Leonora Mariano, being not the owner of the subject property, we declare that both the *Mortgage Contract* and the *Sanglaan ng Lupa at Bahay* she executed are void *ab initio*. For a person to validly constitute a mortgage on real estate, he must be the absolute owner of the property mortgaged as required by Article 2085 of the New Civil Code. Otherwise stated, the mortgagor must be the owner of the property subject of the mortgage; otherwise, the mortgage is void.

Thus, having declared the *Absolute Sale of Real Property* and the two mortgages, i.e. the *Mortgage Contract* and the *Sanglaan ng Lupa at Bahay*, void, all rights and obligations created thereunder are effectively obliterated and rendered ineffective. Luz Nicolas' supposed ownership of the subject property and her right to collect rentals on Leonora Mariano's five-unit apartment, on the one hand, and the latter's mortgage debt of ₱552,000.00, on the other hand, are necessarily void, hence, without force and effect. A void contract is equivalent to nothing; it produces no civil effect. It does not create, modify, or extinguish a juridical relation. Parties to a void agreement cannot expect the aid of the law. The courts leave them as they are, because they are deemed in *pari delicto* or in equal fault. It follows, therefore, that the award of moral damages must also be vacated. The rule is no damages may be recovered on the basis of a void

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[12] Citing *Heirs of Salvador Hermosilla v. Spouses Remoquillo*, 542 Phil. 390 (2007).

[13] Citing *Magoyag v. Maruhom*, 640 Phil. 289 (2010) and *Heirs of Salvador Hermosilla v. Spouses Remoquillo*, *id*.

contract since being inexistent, it produces no juridical tie between the parties involved.

WHEREFORE, the appeal is PARTLY GRANTED. The assailed *Decision* dated August 26, 2009 of the RTC, Branch 121, Caloocan City, in Civil Case No. C-20937 is AFFIRMED with MODIFICATION, deleting the award of moral damages of ₱100,000.00 to Leonora Mariano.

SO ORDERED.[14]

Nicolas moved to reconsider, but in its assailed March 1, 2012 Resolution, the CA held its ground. Hence, the present Petition.

On May 8, 2012, Mariano filed a Motion for Execution Pending Appeal.[15]

In a November 13, 2013 Resolution,[16] this Court resolved to give due course to the instant Petition.

On November 5, 2014, Mariano filed a Motion for Urgent Execution *Pendente Lite*,[17] which the Court noted in a February 2, 2015 Resolution.[18]

Issues

Nicolas submits that –

I.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN APPLYING THE RULINGS IN *HEIRS OF SALVADOR HERMOSILLA VS. REMOQUILLO (513 SCRA 409-410)* AND *MAGOYAG VS. MARUHOM (626 SCRA 247, 257 [2010])* WHICH ARE INAPPLICABLE TO THE CASE AT BAR SINCE

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

[15] *Id*. at 170-174.

[16] *Id*. at 233-234.

[17] *Id*. at 266-267.

[18] *Id*. at 278.

RESPONDENT LEONORA C. MARIANO ALIENATED THE SAID PROPERTY WHEN SHE WAS THE ABSOLUTE OWNER OF THE PROPERTY.

a) THE TRANSFER CERTIFICATE OF TITLE ISSUED IN FAVOR OF RESPONDENT MARIANO IS AN EVIDENCE OF HER OWNERSHIP OVER THE SUBJECT PROPERTY.

b) ARTICLE 1477 OF THE NEW CIVIL CODE BOLSTERS RESPONDENT'S OWNERSHIP OVER THE SUBJECT PROPERTY WHICH NECESSARILY CAPACITATES HER TO ALIENATE THE SAID PROPERTY IN FAVOR OF PETITIONER.

II.

THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN HOLDING THAT RESPONDENT WAS NOT THE ABSOLUTE OWNER AT THE TIME THE DEED OF ABSOLUTE SALE WAS EXECUTED.

III.

THE PROVISO IN THE TRANSFER CERTIFICATE OF TITLE THAT PROHIBITS APPELLEE LEONORA C. MARIANO TO TRANSFER OR ENCUMBER THE SUBJECT PROPERTY IS A STIPULATION CONTRARY TO LAW SINCE THE SAID PROVISO YIELDS TO R.A. 6552 (*AN ACT TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS [MACEDA LAW]*).

IV.

THE DEED OF SALE OVER THE SUBJECT PROPERTY BETWEEN THE PARTIES IS VALID AND BINDING.[19]

Arguments of Nicolas

Praying that the assailed CA dispositions be reversed and set aside, Nicolas argues in her Petition that the CA seriously erred in affirming the cancellation of the mortgage contracts

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[19] *Id.* at 14-15.

and invalidating the parties' deed of sale, since, as the registered owner of the subject property under Transfer Certificate of Title (TCT) No. C-44249, Mariano had every right to mortgage and sell the same to her; that while the National Housing Authority (NHA) withheld the original copy of TCT No. C-44249 and merely gave a photocopy thereof to Mariano pending full payment of the installments, this does not detract from the fact that Mariano is the owner of the subject property; that while there is a *proviso* in TCT No. C-44249 to the effect that Mariano may not transfer or encumber the subject property within five years from the date of release of the mortgage without the NHA's prior written consent and authority, this condition is null and void as it unduly restricts Mariano's rights as owner of the subject property; that Republic Act No. 6552 should instead apply in Mariano's case, which involves an installment sale of real property; and that consequently, the mortgages and deed of sale executed by and between the parties should be upheld for being in accordance with law, supported by adequate consideration, and in furtherance of the intentions of the parties thereto.

Arguments of Mariano

In her Comments and Opposition to the Petition for Review,[20] Mariano fully agrees with the pronouncements of the CA, except that she believes that she must be awarded moral damages as prayed for and proved during trial. She admits that even if TCT No. C-44249 was issued in her name, she is not the owner of the subject property since she has not fully paid the installments to the NHA; this being so, she concedes that she had no right to mortgage and sell the same to Nicolas. She adds that TCT No. C-44249 constitutes mere evidence of title, and does not vest title itself, to the subject property. Thus, she prays for affirmance with modification, in that she be awarded the amounts of ₱960,000.00 as reimbursement for Nicolas's excess rental collections; ₱500,000.00 additional actual damages; ₱1,000,000.00 moral damages; ₱400,000.00 attorney's fees; and costs of suit.

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[20] *Id.* at 175-202.

Our Ruling

The Petition must be denied.

While title to TCT No. C-44249 is in the name of Mariano, she has not completed her installment payments to NHA; this fact is not disputed, and as a matter of fact, Mariano admits it. Indeed, Mariano even goes so far as to concede, in her Comments and Opposition to the Petition, that she is not the owner of the subject property.[21] Thus, if she never became the owner of the subject property, then she could not validly mortgage and sell the same to Nicolas. The principle *nemo dat quod non habet* certainly applies.

> x x x By title, the law refers to ownership which is represented by that document. Petitioner apparently confuses **certificate** with **title**. Placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. **Ownership is different from a certificate of title**. The TCT is only the best proof of ownership of a piece of land. Besides, the certificate cannot always be considered as conclusive evidence of ownership. x x x[22] (Emphasis supplied)

Indeed, the Torrens system of land registration "merely confirms ownership and does not create it. It cannot be used to divest lawful owners of their title for the purpose of transferring it to another one who has not acquired it by any of the modes allowed or recognized by law."[23]

Nicolas is charged with knowledge of the circumstances surrounding the subject property. The original owner's copy of TCT No. C-44249 is not in Mariano's possession, and the latter could only present a photocopy thereof to her. Before one could part with his money as mortgagee or buyer of real

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[21] *Id.* at 189-190.

[22] *Lee Tek Sheng v. Court of Appeals*, 354 Phil. 556, 561 (1998).

[23] *Peralta v. Heirs of Bernardina Abalon*, G.R. Nos. 183448 & 183464, June 30, 2014, 727 SCRA 477, 491.

property, it is only natural to demand to be presented with the original owner's copy of the certificate of title covering the same. Secondly, Entry No. 98464/C-39393 on the dorsal side of TCT No. C-44249 constitutes sufficient warning as to the subject property's condition at the time. In other words, TCT No. C-44249 was not a clean title, and if Nicolas exercised diligence, she would have discovered that Mariano was delinquent in her installment payments to the NHA, which in turn would have generated the necessary conclusion that the property belonged to the said government agency.

For her part, Mariano cannot recover damages on account of her claimed losses arising from her entering into contract with Nicolas. Realizing that she is not the owner of the subject property and knowing that she has not fully paid the price therefor, she is as guilty as Nicolas for knowingly mortgaging and thereafter selling what is not hers. As correctly held by the CA, both parties herein are not in good faith; they are deemed in *pari delicto* or in equal fault, and for this, "[n]either one may expect positive relief from courts of justice in the interpretation of their contract. The courts will leave them as they were at the time the case was filed."[24] Besides, if Mariano's prayer for damages were to be considered at all, she should have directly assailed the CA's pronouncement by filing her own petition before this Court, which she failed to do.

With the foregoing pronouncement, the Court finds no need to tackle the other issues raised by the parties. They have become irrelevant in light of the view taken of the case. Consequently, Mariano's Motion for Execution Pending Appeal and Motion for Urgent Execution *Pendente Lite* require no further resolution.

WHEREFORE, the Petition is **DENIED**. The June 21, 2011 Decision and March 1, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 93532 are **AFFIRMED**.

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[24] *Constantino v. Heirs of Pedro Constantino, Jr.*, 718 Phil. 575, 585 (2013), citing *Packaging Products Corporation v. National Labor Relations Commission*, 236 Phil. 225, 234-235 (1987).

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 202176. August 1, 2016]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **CHUY LU TAN, MR. ROMEO TANCO, DR. SY SE HIONG, and TAN CHU HSIU YEN,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE SALE; A CREDITOR IS NOT BARRED FROM RECOVERING ANY UNPAID BALANCE ON THE PRINCIPAL OBLIGATION IF THE EXTRAJUDICIAL FORECLOSURE SALE OF THE PROPERTY SUBJECT OF THE REAL ESTATE MORTGAGE RESULTS IN A DEFICIENCY.— Settled is the rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency. x x x Indeed, the fact that the mortgaged property was sold at an amount less than its actual market value should not militate against the right to such recovery. This Court has likewise ruled that in deference to the rule that a mortgage is simply a security and cannot be considered payment of an outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the extrajudicial foreclosure sale at a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation.

2. ID.; ID.; ID.; THERE IS NO RULE OR ANY GUIDELINE PRESCRIBING THE MINIMUM AMOUNT OF BID, OR THAT THE BID SHOULD BE AT LEAST EQUAL TO THE PROPERTIES' CURRENT APPRAISED VALUE.— Act No. 3135, which governs extrajudicial foreclosure of real estate mortgages, has no requirement for the determination of the mortgaged properties' appraisal value. Nothing in the law likewise indicates that the mortgagee-creditor's appraisal value shall be the basis for the bid price. **Neither is there any rule nor any guideline prescribing the minimum amount of bid, nor that the bid should be at least equal to the properties' current appraised value**. What the law only provides are the requirements, procedure, venue and the mortgagor's right to redeem the property. Throughout a long line of jurisprudence, this Court has declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.

3. REMEDIAL LAW; COURTS; EQUITY; APPLIED ONLY IN THE ABSENCE OF, AND NEVER AGAINST, STATUTORY LAW OR JUDICIAL RULES OF PROCEDURE.— [T]he Court may not temper respondents' liability to the petitioner on the ground of equity. The Court is barred by its own often repeated admonition that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure. For all its conceded merit, equity is available only in the absence of law and not as its replacement. The law and jurisprudence on the matter are clear enough to close the door on a recourse to equity, insofar as the present case is concerned.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; OBLIGATORY FORCE OF CONTRACTS; OBLIGATIONS ARISING FROM A CONTRACT HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH, PROVIDED THAT THE CONTRACT IS NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS OR PUBLIC POLICY.— Article 1159 of the Civil Code expressly provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. In the present case, it is clear under the Promissory Notes, Real Estate Mortgage contract and the

Continuing Surety Agreement executed by respondents that they voluntarily bound themselves to pay the amounts being claimed by petitioner. x x x Nonetheless, the Court does not totally agree with petitioner's contention that the rate of penalty charges which should be imposed on the deficiency claim, as well as the recoverable attorney's fees, should be that embodied in the contract entered into by the parties. x x x [A] contract is the law between the parties and courts have no choice but to enforce such contract. This principle, however, is subject to the condition that the contract is not contrary to law, morals, good customs or public policy.

5. **ID.; ID.; HUMAN RELATIONS; UNJUST ENRICHMENT; EXISTS WHEN A PERSON UNJUSTLY RETAINS A BENEFIT TO THE LOSS OF ANOTHER, OR WHEN A PERSON RETAINS MONEY OR PROPERTY OF ANOTHER AGAINST THE FUNDAMENTAL PRINCIPLES OF JUSTICE, EQUITY AND GOOD GOVERNANCE.—** [T]here is no convincing evidence nor argument which would show that petitioner is not entitled to the deficiency it claims. The CA simply says that to allow petitioner to recover the amount it seeks, which is allegedly over and above the actual value of the property it bought at public auction, would amount to unjust enrichment. However, the Court does not see any unjust enrichment resulting from upholding the right of the petitioner to collect any deficiency from respondents. Unjust enrichment exists when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good governance. x x x [T]here is a strong legal basis for petitioner's claim against respondents for the balance of their loan obligation.

6. **ID.; ID.; OBLIGATIONS AND CONTRACTS; DAMAGES; LIQUIDATED DAMAGES; SHALL BE EQUITABLY REDUCED IF THEY ARE INIQUITOUS OR UNCONSCIONABLE.—** With respect to the penalty charge, this Court has held that the surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Article 2226 of the Civil Code, and is separate and distinct from interest payment. Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation. Nonetheless, under

Article 2227 of the Civil Code, liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable. x x x In the instant case, the Court finds the eighteen percent (18%) penalty charge imposed by petitioner on the deficiency claim, computed from the time of default, as excessive and, accordingly, reduces it considering that petitioner was already able to recover a large portion of respondents' principal obligation. In consonance with prevailing jurisprudence, the Court finds it proper to reduce the rate of penalty charge imposed on the deficiency claim from eighteen percent (18%) *per annum* to twelve percent (12%) *per annum.*

7. ID.; ID.; ID.; ID.; ATTORNEY'S FEES; MAY BE RECOVERED UNDER A WRITTEN AGREEMENT BUT THE COURT STILL HAS THE POWER TO REDUCE THE SAME IF THE SAID FEES ARE UNCONSCIONABLE.— As to the attorney's fees, the law allows a party to recover attorney's fees under a written agreement. x x x The foregoing notwithstanding, even if such attorney's fees are allowed by law, x x x the courts still have the power to reduce the same if the said fees are unreasonable. In the present case, the subject Promissory Notes provide for the payment of attorney's fees at the rate of ten percent (10%) of the amount due. The same must be equitably reduced taking into account the fact that: (1) petitioner has already recovered the principal amount it seeks during the foreclosure sale; (2) petitioner has likewise recovered a sizeable portion of the interest and penalty charges which were imposed on the principal amount due; (3) the attorney's fees are not an integral part of the cost of borrowing but a mere incident of collection; and (4) the attorney's fees were intended as penal clause to answer for liquidated damages, which is similar to the purpose of the imposition of penalty charge. Hence, the rate of ten percent (10%) of the total amount due, as suggested by petitioner, is too onerous. Under the premises, attorney's fees equivalent to ten percent (10%) of the deficiency claim is reasonable.

APPEARANCES OF COUNSEL

Perez Calima Maynigo & Roque Law Offices for petitioner.

Anover Anover San Diego & Primavera for respondents R. Tanco, *et al.*

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated March 20, 2012 and June 11, 2012, respectively, in CA-G.R. CV No. 92543. The assailed CA Decision reversed and set aside the July 17, 2008 Decision[3] of the Regional Trial Court (*RTC*) of Makati City, Branch 61, in an action for collection of a sum of money, docketed as Civil Case No. 00-349, while the CA Resolution denied petitioner's motion for reconsideration.

The facts of the case are as follows:

Between February 26, 1996 and May 8, 1996, herein respondents Chuy Lu Tan (*Chuy*) and Romeo Tanco (*Tanco*) obtained five loans from herein petitioner Metropolitan Bank & Trust Company (*Metrobank*) with an aggregate amount of Nineteen Million Nine Hundred Thousand Pesos (₱19,900,000.00). These loans are evidenced by five Promissory Notes executed by Chuy and Tanco on various dates.[4] As security for the said loans, Chuy executed a Real Estate Mortgage[5] on February 26, 1996 over a 1,449.70 square meter parcel of land in Quezon City covered by Transfer Certificate of Title No. RT-53314 (288923). In addition to the said mortgage, herein respondents Sy Se Hiong (*Sy*) and Tan Chu Hsiu Yen (*Tan*) also executed a Continuing Surety Agreement[6] whereby they

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Andres B. Reyes, Jr. and Sesinando E. Villon, concurring; Annex "A" to Petition; *rollo*, pp. 44-57.

[2] *Id*. at 58.

[3] Penned by Judge J. Cedrick O. Ruiz; Annex "OO" to Petition; *id*. at 194-202.

[4] See Annexes "E", "F", "G", "H" and "I" to Petition, *id*. at 66-70.

[5] Annex "J" to Petition, *id*. at 71-72.

[6] Annex "L" to Petition, *id*. at 75.

bound themselves to be solidarily liable with Chuy and Tanco for the principal amount of ₱19,900,000.00 "plus interests thereon at the rate or rates stated in the obligation secured thereby, any or all penalties, costs and expenses which may be incurred by [Metrobank] in granting and/or collecting the aforesaid obligations/indebtedness/instruments, and including those for the custody, maintenance, and preservation of the securities given therefor, as may be incurred by [Metrobank] before or after the date of [the] Surety Agreement."[7]

Subsequently, Chuy and Tanco failed to settle their loans despite Metrobank's repeated demands for payment. In a final demand letter dated October 27, 1999, Metrobank's counsel notified respondent Chuy that as of October 15, 1999, their obligations, comprising the principal amount loaned, together with interest and penalties, amounted to ₱24,353,062.03.[8] Consequently, on December 14, 1999, Metrobank extrajudicially foreclosed the mortgage and the property was sold to it (*Metrobank*) as the highest bidder for the amount of ₱24,572,268.00.[9]

However, in separate letters to the respondents, which were all dated January 26, 2000, Metrobank claimed that after application of the bid price to the respondents' outstanding obligation and the payment of the costs of foreclosure, accrued interest, penalty charges, attorney's fees and other related expenses, there remained a deficiency of ₱1,641,815.00, as of January 15, 2000.[10] As such, Metrobank demanded from respondents the payment of the said deficiency. For respondents' failure to heed Metrobank's demand, the latter filed a suit for collection of a sum of money with the RTC of Makati.

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[7] *Id*.

[8] Annex "M" to Petition, *id*. at 76-77.

[9] See Certificate of Sale, Annex "U" to Petition, *id*. at 89-90.

[10] See Annexes "W", "X", "Y" and "Z" to Petition, *id*. at 92-103.

The case was then set for pre-trial. Subsequently, Chuy was declared in default for failure to attend the pre-trial and to file her pre-trial brief.

Thereafter, trial ensued wherein Metrobank was allowed to present its evidence *ex parte* against Chuy.

On July 17, 2008, the RTC rendered its Decision[11] and disposed of the case as follows:

> **WHEREFORE**, premises duly considered, judgment is hereby rendered ordering the herein defendants, namely, Chuy Lu Tan (Ms. Chuy), Romeo Tanco (Mr. Tanco), Sy Se Hong (Mr. Sy) and Tan Chu Hsiu Yen (Mr. Tan) to **PAY**, jointly and severally, the herein plaintiff Metropolitan Bank and Trust Company (Metrobank) the sum of **ONE MILLION SIX HUNDRED FORTY-ONE THOUSAND EIGHT HUNDRED FIFTEEN PESOS (₱1,641,815.00)**, with interest at the legal rate from 16 January 2000 until the amount is fully paid, and the cost of suit.
>
> **SO ORDERED.**

Both petitioner and respondents, with the exception of Chuy, appealed the RTC Decision with the CA.

In its appeal, Metrobank made the following Assignment of Errors:

> A. THE TRIAL COURT ERRED IN NOT APPLYING THE INTEREST RATES, PENALTY CHARGES STIPULATED IN THE PROMISSORY NOTES ON THE UNPAID OBLIGATION OF [RESPONDENTS].
>
> B. THE TRIAL COURT ERRED IN NOT AWARDING ATTORNEY'S FEES IN FAVOR OF X X X METROBANK.[12]

On the other hand, respondents raised the following issues in their appeal, to wit:

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[11] Annex "OO" to Petition, *id*. at 194-202. (Emphasis in the original)

[12] Annex "UU" to Petition, *id*. at 240.

I

WHETHER THE TRIAL COURT ERRED IN FAILING TO RESOLVE THE ISSUE OF THE EXCESSIVE AND UNFOUNDED AMOUNT OF THE ALLEGED DEFICIENCY BALANCE DUE TO X X X METROBANK IN THE AMOUNT OF ₱1,641,815.00 CONSISTING OF PENALTIES AND SURCHARGES, WHEN THE VALUE OF THE PROPERTY FORECLOSED WAS ALREADY MORE THAN ENOUGH TO PAY THE DEBT IN FULL.

II

WHETHER THE TRIAL COURT ERRED IN FINDING THAT [RESPONDENTS] ARE JOINTLY AND SEVERALLY LIABLE TO X X X METROBANK, DESPITE THE FACT THAT [RESPONDENTS] HAVE ESTABLISHED BY PREPONDERANCE OF EVIDENCE THAT [METROBANK] HAD ALREADY RECOVERED THE UNPAID BALANCE ON THE PRINCIPAL OBLIGATION AND ALREADY SUBSTANTIALLY GAINED FROM THE FORECLOSURE OF THE COLLATERAL PROPERTIES. AS A COURT OF EQUITY, THIS HONORABLE COURT SHOULD NOT TOLERATE AND SHOULD THEREFORE STRIKE OFF SUCH UNREASONABLE AND EXORBITANT PENALTIES AND SURCHARGES BEING CLAIMED BY [METROBANK] IN THIS CASE.

III

WHETHER THE TRIAL COURT ERRED IN FAILING TO RULE THAT RESPONDENT DR. SY'S CONJUGAL PARTNERSHIP [PROPERTIES] WITH HIS WIFE LYDIA SY CANNOT BE HELD ANSWERABLE FOR [METROBANK'S] CLAIMS. HAVING ENTERED INTO THE SURETYSHIP AGREEMENT WITHOUT THE CONSENT OF HIS WIFE, THE CONJUGAL ASSETS OF DR. SY CANNOT BE HELD ANSWERABLE FOR ANY OF [METROBANK'S] CLAIMS ABSENT ANY SHOWING THAT IT REDOUNDED TO THE BENEFIT OF THEIR CONJUGAL PARTNERSHIP.[13]

On March 20, 2012, the CA promulgated its assailed Decision by reversing and setting aside the July 17, 2008 Decision of

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[13] Annex "VV" to Petition, *id*. at 275-276.

the RTC and dismissing Metrobank's complaint. The CA ruled that to allow Metrobank to recover the amount it seeks from respondents would be iniquitous, unconscionable and would amount to unjust enrichment.

Metrobank filed a Motion for Reconsideration,[14] but the CA denied it in its Resolution dated June 11, 2012.

Hence, the present petition with a lone Assignment of Error, to wit:

THE HONORABLE COURT OF APPEALS ERRED IN REVERSING AND SETTING ASIDE THE TRIAL COURT'S DECISION DATED 17 JULY 2008.[15]

In support of its contention, petitioner argues that the CA erred in denying its deficiency claim on the ground that such claim, which allegedly consisted almost entirely of interest and penalties, is iniquitous, unconscionable and exorbitant. Petitioner also posits that the CA erred in ruling that the mortgaged property is worth more than the bid price and, hence, bars petitioner from claiming any deficiency. Lastly, petitioner claims that its deficiency claim should not have been dismissed because respondents have admitted default in the payment of their obligations.

In the instant case, there is no dispute with respect to the total amount of the outstanding loan obligation that respondents owed petitioner at the time of the extrajudicial foreclosure sale of the property subject of the real estate mortgage. Likewise, it is uncontested that by subtracting the amount obtained at the sale of the property, a loan balance still remains. Petitioner merely contends that, contrary to the ruling of the CA, it has the right to collect from respondents the remainder of their obligation after deducting the amount obtained from the extrajudicial foreclosure sale. On the other hand, respondent avers that since the supposed value of the subject property shows

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[14] Annex "AAA" to Petition, *id*. at 365-387.

[15] *Rollo*, p. 23.

that it is more than the amount of their outstanding obligation, then respondents can no longer be held liable for the balance, especially because it was petitioner who bought the property at the foreclosure sale.

The Court rules for the petitioner.

Settled is the rule that a creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency.[16] In *Spouses Rabat v. Philippine National Bank*,[17] this Court held:

> x x x it is settled that if the proceeds of the sale are insufficient to cover the debt in an extrajudicial foreclosure of the mortgage, the mortgagee is entitled to claim the deficiency from the debtor. For when the legislature intends to deny the right of a creditor to sue for any deficiency resulting from foreclosure of security given to guarantee an obligation it expressly provides as in the case of pledges [Civil Code, Art. 2115] and in chattel mortgages of a thing sold on installment basis [Civil Code, Art. 1484(3)]. Act No. 3135, which governs the extrajudicial foreclosure of mortgages, while silent as to the mortgagee's right to recover, does not, on the other hand, prohibit recovery of deficiency. Accordingly, it has been held that a deficiency claim arising from the extrajudicial foreclosure is allowed.[18]

Indeed, the fact that the mortgaged property was sold at an amount less than its actual market value should not militate against the right to such recovery.[19] This Court has likewise ruled that in deference to the rule that a mortgage is simply a security and cannot be considered payment of an outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the

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[16] *Bank of the Philippine Islands v. Reyes*, 680 Phil. 718, 725 (2012).

[17] 688 Phil. 33 (2012).

[18] *Id.* at 47-48, citing *Philippine National Bank v. Court of Appeals,* G.R. No. 121739, June 14, 1999, 308 SCRA 229, 235.

[19] *BPI Family Savings Bank, Inc. v. Spouses Avenido*, 678 Phil. 148, 162 (2011), citing *Prudential Bank v. Martinez*, 267 Phil. 644, 650 (1990).

extrajudicial foreclosure sale at a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation.[20] Thus, in the case of *Suico Rattan & Buri Interiors, Inc. v. Court of Appeals*,[21] this Court explained that:

> **Hence, it is wrong for petitioners to conclude that when respondent bank supposedly bought the foreclosed properties at a very low price, the latter effectively prevented the former from satisfying their whole obligation.** Petitioners still had the option of either redeeming the properties and, thereafter, selling the same for a price which corresponds to what they claim as the properties' actual market value or by simply selling their right to redeem for a price which is equivalent to the difference between the supposed market value of the said properties and the price obtained during the foreclosure sale**.** In either case, petitioners will be able to recoup the loss they claim to have suffered by reason of the inadequate price obtained at the auction sale and, thus, enable them to settle their obligation with respondent bank. Moreover, petitioners are not justified in concluding that they should be considered as having paid their obligations in full since respondent bank was the one who acquired the mortgaged properties and that the price it paid was very inadequate. The fact that it is respondent bank, as the mortgagee, which eventually acquired the mortgaged properties and that the bid price was low is not a valid reason for petitioners to refuse to pay the remaining balance of their obligation. **Settled is the rule that a mortgage is simply a security and not a satisfaction of indebtedness.**

As to petitioner's entitlement to the amount sought to be recovered, respondents, in their Special and Affirmative Defenses,[22] contained in their Answer with Compulsory Counterclaim, as well as in their Appellant's Brief[23] filed with the CA, never disputed the amount and computation of the deficiency sought to be recovered by petitioner. What respondents

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[20] *Bank of the Philippine Islands v. Reyes, supra* note 16.

[21] 524 Phil. 92, 113-114 (2006). (Emphasis ours)

[22] *Rollo*, pp. 116-118.

[23] *Id.* at 259-291.

are insisting is that petitioner is barred from recovering any deficiency because the bid price is considerably inadequate as compared to the alleged actual value of the foreclosed property. However, as discussed above, the settled rule is that when there is right to redeem, the inadequacy of the price becomes immaterial since the judgment debtor may reacquire the property or sell his right to redeem.

In the same manner, what is being implied in the assailed CA Decision is that the bid price should approximate the value of the mortgaged property.

The Court does not agree.

Act No. 3135, which governs extrajudicial foreclosure of real estate mortgages, has no requirement for the determination of the mortgaged properties' appraisal value. Nothing in the law likewise indicates that the mortgagee-creditor's appraisal value shall be the basis for the bid price. **Neither is there any rule nor any guideline prescribing the minimum amount of bid, nor that the bid should be at least equal to the properties' current appraised value.** What the law only provides are the requirements, procedure, venue and the mortgagor's right to redeem the property.[24]

Throughout a long line of jurisprudence, this Court has declared that unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier.[25]

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[24] *Sycamore Ventures Corporation, et al. v. Metropolitan Bank and Trust Co.*, 721 Phil. 290, 300 (2013). (Emphasis ours)

[25] *Bank of the Philippines Islands v. Reyes, supra* note 16, at 727, citing *New Sampaguita Builders Construction Inc. v. Philippine National Bank*, 479 Phil. 483, 514-515 (2004); *The Abaca Corporation of the Phils. v. Garcia*, 338 Phil. 988, 993 (1997); *Gomez v. Gealone*, G.R. No. 58281, November 13, 1991, 203 SCRA 474, 486; *Prudential Bank v. Martinez*, *supra* note 19, at 650; *Francia v. Intermediate Appellate Court*, 245 Phil. 717, 726 (1988); *Vda. de Gordon v. Court of Appeals*, 196 Phil. 159, 165 (1981).

Thus, even if the Court were to assume that the valuation of the property at issue is correct, the Court still holds that the inadequacy of the price at which it was sold at public auction does not prevent petitioner from claiming any deficiency not covered by the said foreclosure sale.

Contrary to the ruling of the CA, the Court may not temper respondents' liability to the petitioner on the ground of equity. The Court is barred by its own often repeated admonition that equity, which has been aptly described as "justice outside legality," is applied only in the absence of, and never against, statutory law or judicial rules of procedure.[26] For all its conceded merit, equity is available only in the absence of law and not as its replacement.[27] The law and jurisprudence on the matter are clear enough to close the door on a recourse to equity, insofar as the present case is concerned.

Indeed, Article 1159 of the Civil Code expressly provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. In the present case, it is clear under the Promissory Notes, Real Estate Mortgage contract and the Continuing Surety Agreement executed by respondents that they voluntarily bound themselves to pay the amounts being claimed by petitioner.

Furthermore, there is no convincing evidence nor argument which would show that petitioner is not entitled to the deficiency it claims. The CA simply says that to allow petitioner to recover the amount it seeks, which is allegedly over and above the actual value of the property it bought at public auction, would amount to unjust enrichment. However, the Court does not see any unjust enrichment resulting from upholding the right of the petitioner to collect any deficiency from respondents. Unjust enrichment exists when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity

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[26] *Bank of the Philippine Islands v. Reyes, supra* note 16, at 729.

[27] *The Parents-Teachers Association of St. Mathew Christian Academy, et al. v. The Metropolitan Bank and Trust Co.,* 627 Phil. 669, 690 (2010).

and good governance.[28] As discussed above, there is a strong legal basis for petitioner's claim against respondents for the balance of their loan obligation.

Nonetheless, the Court does not totally agree with petitioner's contention that the rate of penalty charges which should be imposed on the deficiency claim, as well as the recoverable attorney's fees, should be that embodied in the contract entered into by the parties. As earlier mentioned, a contract is the law between the parties and courts have no choice but to enforce such contract.[29] This principle, however, is subject to the condition that the contract is not contrary to law, morals, good customs or public policy.[30]

In the instant case, the Promissory Notes executed by respondents indicate that the interest rates were pegged at sixteen percent (16%) *per annum,* computed from the dates of execution thereof. Under settled jurisprudence, twenty-four percent (24%) interest rate is not considered unconscionable.[31] Hence, the Court finds the sixteen percent (16%) interest rate imposed by petitioner as fair.

With respect to the penalty charge, this Court has held that the surcharge or penalty stipulated in a loan agreement in case of default partakes of the nature of liquidated damages under Article 2226 of the Civil Code, and is separate and distinct from interest payment.[32] Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of an obligor in case of breach of an obligation.[33]

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[28] *Bank of the Philippine Islands v. Reyes, supra* note 16, at 729.

[29] *Maynilad Water Supervisors Association v. Maynilad Water Services, Inc.*, G.R. No. 198935, November 27, 2013, 711 SCRA 110, 122.

[30] *Id*.

[31] *Spouses Mallari v. Prudential Bank (now Bank of the Philippine Islands)*, 710 Phil. 490, 498-499 (2013), citing *Villanueva v. Court of Appeals*, 671 Phil. 467, 478 (2011); *Garcia v. Court of Appeals*, 249 Phil. 739 (1988).

[32] *Id*., citing *Ruiz v. Court of Appeals*, 449 Phil. 419 (2003).

[33] *Id*.

Nonetheless, under Article 2227 of the Civil Code, liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

In the same vein, Article 1229 of the same Code provides:

> The judge shall equitably reduce the penalty **when the principal obligation has been partly or irregularly complied** with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.[34]

In the instant case, the Court finds the eighteen percent (18%) penalty charge imposed by petitioner on the deficiency claim, computed from the time of default, as excessive and, accordingly, reduces it considering that petitioner was already able to recover a large portion of respondents' principal obligation. In consonance with prevailing jurisprudence,[35] the Court finds it proper to reduce the rate of penalty charge imposed on the deficiency claim from eighteen percent (18%) *per annum* to twelve percent (12%) *per annum.*

As to the attorney's fees, the law allows a party to recover attorney's fees under a written agreement.[36] In *Barons Marketing Corporation v. Court of Appeals,*[37] the Court ruled that:

> [T]he attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The

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[34] Emphasis supplied.

[35] *RGM Industries, Inc. v. United Pacific Capital Corporation*, 689 Phil. 660, 665 (2012); *Bank of the Philippine Islands, Inc. v. Spouses Yu, et al.,* 624 Phil. 408, 420 (2010).

[36] *Lim v. Security Bank Corporation*, G.R. No. 188539, March 12, 2014, 718 SCRA 709, 718.

[37] 349 Phil. 769 (1998).

attorney's fees so provided are awarded in favor of the litigant, not his counsel. x x x[38]

The foregoing notwithstanding, even if such attorney's fees are allowed by law, as in the case of the above-discussed penalty charge, the courts still have the power to reduce the same if the said fees are unreasonable.[39]

In the present case, the subject Promissory Notes provide for the payment of attorney's fees at the rate of ten percent (10%) of the amount due. The same must be equitably reduced taking into account the fact that: (1) petitioner has already recovered the principal amount it seeks during the foreclosure sale; (2) petitioner has likewise recovered a sizeable portion of the interest and penalty charges which were imposed on the principal amount due; (3) the attorney's fees are not an integral part of the cost of borrowing but a mere incident of collection; and (4) the attorney's fees were intended as penal clause to answer for liquidated damages, which is similar to the purpose of the imposition of penalty charge.[40] Hence, the rate of ten percent (10%) of the total amount due, as suggested by petitioner, is too onerous. Under the premises, attorney's fees equivalent to ten percent (10%) of the deficiency claim is reasonable.

Lastly, pursuant to prevailing jurisprudence,[41] the total monetary awards shall earn interest at the prevailing rate of six percent (6%) *per annum* from finality of this Decision until full satisfaction thereof, which takes the form of a judicial debt.

WHEREFORE, the petition is **PARTLY GRANTED**. The March 20, 2012 Decision and June 11, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 92543 are **REVERSED**

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[38] *Barons Marketing Corp. v. CA, supra,* at 780, citing *Polytrade Corporation v. Blanco*, 140 Phil. 604, 609 (1969).

[39] *Lim v. Security Bank Corporation, supra* note 35.

[40] *RGM Industries, Inc. v. United Pacific Capital Corporation, supra* note 34, at 665-666.

[41] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

and **SET ASIDE**. The July 17, 2008 Decision of the Regional Trial Court of Makati City, Branch 61 is **REINSTATED** with the **MODIFICATION** that the sum of ₱1,641,815.00 due to petitioner shall earn interest at the rate of sixteen percent (16%) *per annum* and penalty charge at the rate of twelve percent (12%) *per annum*, computed from January 16, 2000 until finality of this Decision. Respondents are also **ORDERED** to **PAY** attorney's fees in the amount of ₱164,181.50, which is equivalent to ten percent (10%) of the deficiency claim. The total monetary awards shall earn interest at the rate of six percent (6%) *per annum*, computed from the finality of this Decision until their full satisfaction.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 213241. August 1, 2016]

PHILIPPINE NATIONAL BANK, *petitioner*, *vs.* **JUAN F. VILA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ASCERTAINMENT OF GOOD FAITH OR THE LACK OF IT, AND THE DETERMINATION OF NEGLIGENCE ARE FACTUAL MATTERS WHICH LAY OUTSIDE THE SCOPE OF A PETITION FOR REVIEW ON *CERTIORARI*.— In general, the issue of whether a mortgagee is in good faith cannot be entertained in a Rule 45 petition. This is because the ascertainment of good faith or the lack thereof, and the determination of negligence are factual

matters which lay outside the scope of a petition for review on *certiorari.* Good faith, or the lack of it, is a question of intention. In ascertaining intention, courts are necessarily controlled by the evidence as to the conduct and outward facts by which alone the inward motive may, with safety, be determined. A recognized exception to the rule is when there are conflicting findings of fact by the CA and the RTC. In the case at bar, [the] RTC and the CA agreed on their findings.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; MORTGAGE; BANKING INSTITUTIONS ARE BEHOOVED BY STATUTES AND JURISPRUDENCE TO EXERCISE GREATER CARE AND PRUDENCE BEFORE ENTERING INTO A MORTGAGE CONTRACT.— The RTC, which possessed the first hand opportunity to observe the demeanor of the witnesses and admit the documentary evidence, found that PNB accepted outright the collateral offered by the Spouses Cornista without making further inquiry as to the real status of the subject property. Had the bank been prudent and diligent enough in ascertaining the condition of the property, it could have discovered that the same was in the possession of Vila who, at that time, possessed a colorable title thereon being a holder of a Final Certificate of Sale. The RTC further exposed the frailty of PNB's claim by pointing to the fact that it was Vila who was paying the realty tax on the property, a crucial information that the bank could have easily discovered had it exercised due diligence. Resonating the findings of the RTC, the CA also declared that PNB fell short in exercising the degree of diligence expected from bank and financial institutions. x x x Clearly, the PNB failed to observe the exacting standards required of banking institutions which are behooved by statutes and jurisprudence to exercise greater care and prudence before entering into a mortgage contract.

3. ID.; ID.; ID.; ID.; MORTGAGEE IN GOOD FAITH; THE FAILURE OF THE MORTGAGEE TO TAKE PRECAUTIONARY STEPS WOULD MEAN NEGLIGENCE ON HIS PART AND WOULD THEREBY PRECLUDE IT FROM INVOKING THAT IT IS A MORTGAGEE IN GOOD FAITH.— By failing to uncover a crucial fact that the mortgagors were not the possessors of the subject property, We could not lend credence to the claim

of the bank that an ocular inspection of the property was conducted. What further tramples upon PNB's claim is the fact that, as shown on the records, it was Vila who was religiously paying the real property tax due on the property from 1989 to 1996, another significant fact that could have raised a red flag as to the real ownership of the property. The failure of the mortgagee to take precautionary steps would mean negligence on his part and would thereby preclude it from invoking that it is a mortgagee in good faith. Before approving a loan application, it is standard operating procedure for banks and financial institutions to conduct an ocular inspection of the property offered for mortgage and to determine the real owner(s) thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.

4. MERCANTILE LAW; BANKING LAWS; BANKS; REQUIRED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE AND HIGH STANDARDS OF INTEGRITY AND PERFORMANCE IN THEIR DEALINGS.— We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the country's economy in general. The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.

5. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; INNOCENT PURCHASER FOR VALUE; A PERSON WHO DELIBERATELY IGNORES A SIGNIFICANT FACT THAT COULD CREATE SUSPICION IN AN OTHERWISE REASONABLE PERSON IS NOT AN INNOCENT PURCHASER FOR VALUE.— PNB clearly failed to observe the required degree of caution in readily approving the loan and accepting the collateral offered by the Spouses Cornista without first ascertaining the real

ownership of the property. It should not have simply relied on the face of title but went further to physically ascertain the actual condition of the property. That the property offered as security was in the possession of the person other than the one applying for the loan and the taxes were declared not in their names could have raised a suspicion. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value.

6. ID.; ID.; ID.; DAMAGES; MORAL DAMAGES; MAY BE AWARDED FOR WILLFUL INJURY TO PROPERTY.— Moral damages are not awarded to penalize the defendant but to compensate the plaintiff for the injuries he may have suffered. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. In the instant case, we find that the award of moral damages is proper.

7. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; GRANTED IN CASE AT BAR.— As for the award of exemplary damages, we deem that the same is proper for the PNB was remiss in its obligation to inquire the real status of the subject property, causing damage to Vila. Finally, we rule that the award of attorney's fees and litigation expenses is valid since Vila was compelled to litigate and thus incur expenses in order to protect its rights over the subject property.

APPEARANCES OF COUNSEL

Isagani P. Arenas for petitioner.
Julio Rafael Gayaman & Miller E. Quintin, Jr., for respondent.

D E C I S I O N

PEREZ, *J.*:

For resolution of the Court is the instant Petition for Review on *Certiorari*[1] filed by petitioner Philippine National Bank

[1] *Rollo*, pp. 27-40.

(PNB), seeking to reverse and set aside the Decision[2] dated 18 December 2013 and Resolution[3] dated 13 June 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 97612. The assailed decision and resolution affirmed the 22 June 2011 Decision[4] of the Regional Trial Court (RTC) of Villasis, Pangasinan, Branch 50 which found that petitioner PNB is not a mortgagee in good faith.

The Facts

Petitioner PNB is a universal banking corporation duly authorized by *Bangko Sentral ng Pilipinas (BSP)* to engage in banking business.

Sometime in 1986, Spouses Reynaldo Cornista and Erlinda Gamboa Cornista (Spouses Cornista) obtained a loan from Traders Royal Bank (Traders Bank).[5] To secure the said obligation, the Spouses Cornista mortgaged to the bank a parcel of land with an area of 451 square meters designated as Lot 555-A-2 and registered under Transfer Certificate of Title (TCT) No. 131498 in their names by the Register of Deeds of Pangasinan.

For failure of the Spouses Cornista to make good of their loan obligation after it has become due, Traders Bank foreclosed the mortgage constituted on the security of the loan. After the notice and publication requirements were complied with, the subject property was sold at the public auction on 23 December 1987. During the public sale, respondent Juan F. Vila (Vila) was declared as the highest bidder after he offered to buy the subject property for ₱50,000.00. The Certificate of Sale dated 13 January 1988 was duly recorded in TCT No. 131498 under **Entry No. 623599.**[6]

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[2] *Id*. at 41-48; penned by Associate Justice Socorro B. Inting, concurred with Associate Justices Jose C. Reyes, Jr. and Myra V. Garcia-Fernandez.

[3] *Id*. at 49-50.

[4] *Id*. at 126-140.

[5] The amount of the loan obligation was not mentioned in the records.

[6] *Rollo*, p. 80.

To exercise his right of ownership, Vila immediately took possession of the subject property and paid the real estate taxes corresponding thereon.

On 11 February 1989, a Certificate of Final Sale was issued to Vila after the one-year redemption period had passed without the Spouses Cornista exercising their statutory right to redeem the subject property. He was, however, prevented from consolidating the ownership of the property under his name because the owner's copy of the certificate of title was not turned over to him by the Sheriff.

Despite the lapse of the redemption period and the fact of issuance of a Certificate of Final Sale to Vila, the Spouses Cornista were nonetheless allowed to buy back the subject property by tendering the amount of ₱50,000.00. A Certificate of Redemption[7] dated 14 March 1989 was issued for this purpose and was duly annotated in the title under **Entry No. 708261**.

Claiming that the Spouses Cornista already lost their right to redeem the subject property, Vila filed an action for nullification of redemption, transfer of title and damages against the Spouses Cornista and Alfredo Vega in his capacity as the Register of Deeds of Pangasinan. The case was docketed as *Civil Case No. V-0242* on 10 January 1992 and was raffled to Branch 50. A Notice of *Lis Pendens* was issued for this purpose and was duly recorded in the certificate of title of the property on 19 October 1992 under **Entry No. 759302**.[8]

On 3 February 1995, the RTC rendered a Decision[9] in *Civil Case No. V-0242* in favor of Vila thereby ordering the Register of Deeds to cancel the registration of the certificate of redemption and the annotation thereof on TCT No. 131498. The said decision was affirmed by the CA on 19 October 1997 in *CA-G.R. CV*

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[7] *Id*. at 74.

[8] *Id*. at 59.

[9] *Id*. at 82-88.

No. 49463.[10] The decision of the appellate court became final and executory on 19 November 1997.

In order to enforce the favorable decision, Vila filed before the RTC a Motion for the Issuance of Writ of Execution which was granted by the court. Accordingly, a Writ of Execution[11] was issued by the RTC on 14 December 1997.

By unfortunate turn of events, the Sheriff could not successfully enforce the decision because the certificate of title covering the subject property was no longer registered under the names of the Spouses Cornista. Hence, the judgment was returned unsatisfied as shown in Sheriff's Return[12] dated 13 July 1999.

Upon investigation it was found out that during the *interregnum* the Spouses Cornista were able to secure a loan from the PNB in the amount of ₱532,000.00 using the same property subject of litigation as security. The Real Estate Mortgage (REM) was recorded on 28 September 1992 under **Entry No. 758171**[13] or month before the Notice of *Lis Pendens* was annotated.

Eventually, the Spouses Cornista defaulted in the payment of their loan obligation with the PNB prompting the latter to foreclose the property offered as security. The bank emerged as the highest bidder during the public sale as shown at the Certificate of Sale issued by the Sheriff. As with the prior mortgage, the Spouses Cornista once again failed to exercise their right of redemption within the required period allowing PNB to consolidate its ownership over the subject property. Accordingly, TCT No. 131498[14] in the name of the Spouses

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[10] *Id.* at 89-95.

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

[12] *Id.* at 98.

[13] *Id.* at 59.

[14] *Id.* at 80.

Cornista was cancelled and a new one under TCT No. 216771[15] under the name of the PNB was issued.

The foregoing turn of events left Vila with no other choice but to commence another round of litigation against the Spouses Cornista and PNB before the RTC of Villasis, Pangasinan, Branch 50. In his Complaint docketed as *Civil Case No. V-0567,* Vila sought for the nullification of TCT No. 216771 issued under the name of PNB and for the payment of damages.

To refute the allegations of Vila, PNB pounded that it was a mortgagee in good faith pointing the fact that at the time the subject property was mortgaged to it, the same was still free from any liens and encumbrances and the Notice of *Lis Pendens* was registered only a month after the REM was annotated on the title. PNB meant to say that at the time of the transaction, the Spouses Cornista were still the absolute owners of the property possessing all the rights to mortgage the same to third persons. PNB also harped on the fact that a close examination of title was conducted and nowhere was it shown that there was any cloud in the title of the Spouses Cornista, the latter having redeemed the property after they have lost it in a foreclosure sale.[16]

After the Pre-Trial Conference, trial on the merits ensued. The court *a quo* then proceeded to receive documentary and testimonial evidence from the opposing parties. Thereafter, the parties submitted their respective memorandum and the case was submitted for decision.

On 22 June 2011, the RTC rendered a Decision[17] in favor of Vila and ruled that PNB is not a mortgagee in good faith. As a financial institution, the trial court held that PNB is expected to observe a higher degree of diligence. In hastily granting the loan, the trial court declared that PNB failed in this regard.

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[15] *Id.* at 99.

[16] *Id.* at 100-125.

[17] *Id.* at 126-140.

Had the bank exercised due diligence, it could have easily discovered that the Spouses Cornista were not the possessors of the subject property which could lead it to the fact that at the time the subject property was mortgaged to it, a litigation involving the same was already commenced before the court. It was further ratiocinated by the RTC that "[a] mortgagee cannot close his eyes to facts which should put a reasonable man upon his guard" in ascertaining the status of a mortgaged property. The dispositive portion of the decision reads:

> "WHEREFORE, judgment is hereby rendered:
>
> 1. Declaring the Real Estate Mortgage dated September 28, 1992, executed by the Spouses Reynaldo Cornista and Erlinda Gamboa in favor of the Philippine National Bank, Tayug, Pangasinan Branch, over the parcel of land covered by TCT No. 131498 null and void;
>
> 2. Declaring the Deed of Sale dated September 27, 1996, in favor of the PNB null and void;
>
> 3. Ordering the nullification and cancellation of Transfer Certificate of Title No. 216771 in the name of PNB;
>
> 4. Ordering the Register of Deeds of Pangasinan to issue a new certificate of title covering the property subject matter of this case in the name of Juan F. Vila; and
>
> 5. Ordering [the] defendant PNB to pay the plaintiff ₱50,000.00 moral damages, ₱50,000.00 exemplary damages and ₱100,000.00 attorney's fees and litigation expenses.
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> Costs against defendant Philippine National Bank.
>
> SO ORDERED."[18]

In a Resolution[19] dated 13 June 2014, the RTC refused to reconsider its earlier decision and thereby denied the Motion for Reconsideration interposed by PNB.

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[18] *Id*. at 139-140.

[19] *Id*. at 49-50.

On appeal, the CA Decision[20] dated 18 December 2013 affirmed the RTC ruling. In failing to exercise greater care and diligence in approving the loan of the Spouses Cornista without first ascertaining if there were any defects in their title, the appellate court held that PNB could not be afforded the status of a mortgagee in good faith. It went further by declaring that "[a] bank whose business is impressed with public interest is expected to exercise more care and prudence in its dealings than a private individual, even in cases involving registered lands. A bank cannot assume that, simply because the title offered as security is on its face free of any encumbrances of lien, it is relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged."[21] The CA thus disposed:

"**WHEREFORE,** the instant appeal is **DENIED.** The assailed Decision dated June 22, 2011 and the Resolution dated August 11, 2011 of the Regional Trial Court of Villasis, Pangasinan, Branch 50, in Civil Case No, V-0567 are hereby **AFFIRMED.**"[22]

On 13 June 2014, the CA issued a Resolution[23] denying the Motion for Reconsideration of the PNB prompting the bank to seek recourse before the Court *via* instant Petition for Review on *Certiorari*. For Our resolution are the following issues:

The Issues

I.

WHETHER OR NOT PNB IS A MORTGAGEE IN GOOD FAITH;

II.

WHETHER OR NOT PNB IS LIABLE FOR DAMAGES.[24]

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[20] *Id*. at 41-48.

[21] *Id*. at 46.

[22] *Id*. at 48.

[23] *Id*. at 49-50.

[24] *Id*. at 32.

The Court's Ruling

We resolve to deny the petition.

In general, the issue of whether a mortgagee is in good faith cannot be entertained in a Rule 45 petition. This is because the ascertainment of good faith or the lack thereof, and the determination of negligence are factual matters which lay outside the scope of a petition for review on *certiorari.* Good faith, or the lack of it, is a question of intention. In ascertaining intention, courts are necessarily controlled by the evidence as to the conduct and outward facts by which alone the inward motive may, with safety, be determined.[25] A recognized exception to the rule is when there are conflicting findings of fact by the CA and the RTC.[26] In the case at bar, RTC and the CA agreed on their findings.

The RTC, which possessed the first hand opportunity to observe the demeanor of the witnesses and admit the documentary evidence, found that PNB accepted outright the collateral offered by the Spouses Cornista without making further inquiry as to the real status of the subject property. Had the bank been prudent and diligent enough in ascertaining the condition of the property, it could have discovered that the same was in the possession of Vila who, at that time, possessed a colorable title thereon being a holder of a Final Certificate of Sale. The RTC further exposed the frailty of PNB's claim by pointing to the fact that it was Vila who was paying the realty tax on the property, a crucial information that the bank could have easily discovered had it exercised due diligence.

Resonating the findings of the RTC, the CA also declared that PNB fell short in exercising the degree of diligence expected from bank and financial institutions. We hereby quote with approval the disquisition of the appellate court:

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[25] *Land Bank of the Philippines v. Belle Corporation*, G.R. No. 205271, 2 September 2015.

[26] *Philippine Banking Corporation v. Dy, et al.*, 698 Phil. 750, 756-757 (2012).

> Thus, before approving a loan application, it is a standard operating practice for these institutions to conduct an ocular inspection of the property offered for mortgage and to verify the genuineness of the title to determine the real owner thereof. The apparent purpose of an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto. Here, [the] PNB has failed to exercise the requisite due diligence in ascertaining the status and condition of the property being offered to it as security for the loan before it approved the same. xxx.[27]

Clearly, the PNB failed to observe the exacting standards required of banking institutions which are behooved by statutes and jurisprudence to exercise greater care and prudence before entering into a mortgage contract.

No credible proof on the records could substantiate the claim of PNB that a physical inspection of the property was conducted. We agree with both the RTC and CA that if in fact it were true that ocular inspection was conducted, a suspicion could have been raised as to the real status of the property. By failing to uncover a crucial fact that the mortgagors were not the possessors of the subject property, We could not lend credence to the claim of the bank that an ocular inspection of the property was conducted. What further tramples upon PNB's claim is the fact that, as shown on the records, it was Vila who was religiously paying the real property tax due on the property from 1989 to 1996, another significant fact that could have raised a red flag as to the real ownership of the property. The failure of the mortgagee to take precautionary steps would mean negligence on his part and would thereby preclude it from invoking that it is a mortgagee in good faith.

Before approving a loan application, it is standard operating procedure for banks and financial institutions to conduct an ocular inspection of the property offered for mortgage and to determine the real owner(s) thereof. The apparent purpose of

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[27] *Rollo*, p. 46.

an ocular inspection is to protect the "true owner" of the property as well as innocent third parties with a right, interest or claim thereon from a usurper who may have acquired a fraudulent certificate of title thereto.[28]

In this case, it was adjudged by the courts of competent jurisdiction in a final and executory decision that the Spouses Cornista's reacquisition of the property after the lapse of the redemption period is fraudulent and the property used by the mortgagors as collateral rightfully belongs to Vila, an innocent third party with a right, could have been protected if PNB only observed the degree diligence expected from it.

In *Land Bank of the Philippines v. Belle Corporation,*[29] the Court exhorted banks to exercise the highest degree of diligence in its dealing with properties offered as securities for the loan obligation:

> When the purchaser or the mortgagee is a bank, the rule on innocent purchasers or mortgagees for value is applied more strictly. Being in the business of extending loans secured by real estate mortgage, banks are presumed to be familiar with the rules on land registration. Since the banking business is impressed with public interest, they are expected to be more cautious, to exercise a higher degree of diligence, care and prudence, than private individuals in their dealings, even those involving registered lands. Banks may not simply rely on the face of the certificate of title. Hence, they cannot assume that, xxx the title offered as security is on its face free of any encumbrances or lien, they are relieved of the responsibility of taking further steps to verify the title and inspect the properties to be mortgaged. As expected, the ascertainment of the status or condition of a property offered to it as security for a loan must be a standard and indispensable part of the bank's operations. xxx. (Citations omitted)

We never fail to stress the remarkable significance of a banking institution to commercial transactions, in particular, and to the

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[28] *Supra* note 26 at 757.

[29] *Supra* note 25.

country's economy in general.[30] The banking system is an indispensable institution in the modern world and plays a vital role in the economic life of every civilized nation.[31] Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have become an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and, most of all, confidence.[32] Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required, of it.[33]

PNB clearly failed to observe the required degree of caution in readily approving the loan and accepting the collateral offered by the Spouses Cornista without first ascertaining the real ownership of the property. It should not have simply relied on the face of title but went further to physically ascertain the actual condition of the property. That the property offered as security was in the possession of the person other than the one applying for the loan and the taxes were declared not in their names could have raised a suspicion. A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value.[34]

Having laid down that the PNB is not in good faith, We are led to affirm the award of moral damages, exemplary damages, attorney's fees and costs of litigation in favor of Vila. Moral damages are not awarded to penalize the defendant but to compensate the plaintiff for the injuries he may have suffered.[35]

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[30] *Bank of Commerce v. Spouses San Pablo*, 550 Phil. 805, 822 (2007).

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*. at 822-823.

[35] *Id*. at 823.

Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due.[36] In the instant case, we find that the award of moral damages is proper.[37] As for the award of exemplary damages, we deem that the same is proper for the PNB was remiss in its obligation to inquire the real status of the subject property, causing damage to Vila.[38] Finally, we rule that the award of attorney's fees and litigation expenses is valid since Vila was compelled to litigate and thus incur expenses in order to protect its rights over the subject property.[39]

WHEREFORE, premises considered, the petition is **DENIED**. The assailed Decision and Resolution of the Court of Appeals are hereby **AFFIRMED.** Accordingly, the decision of the RTC dated 22 June 2011 **STANDS** as the final resolution of this case.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.* concur.

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[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*.

SECOND DIVISION

[G.R. No. 215954. August 1, 2016]

SPOUSES JOVEN SY and CORAZON QUE SY, *petitioners, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI*; MATHEMATICAL COMPUTATIONS OF THE APPELLATE COURT AND THE LOWER COURT ARE GENERALLY NOT REVIEWABLE BY THE SUPREME COURT; EXCEPTIONS.— Mathematical computations are painted in jurisprudence as factual determinations and, thus, generally beyond the province of this Court as it is not a trier of facts. Thus, when supported by substantial evidence, the mathematical computations of the appellate court and the lower court are conclusive and binding on the parties and are not reviewable by this Court. The Court, however, has the option to decide the case in the exercise of its sound discretion and despite having to deal with factual issues in an appeal by *certiorari,* taking into account the attendant circumstances, particularly if the following conditions exist: "1. **When the conclusion is a finding grounded entirely on speculation, surmises and conjectures**; 2. **When the inference made is manifestly mistaken, absurd or impossible**; 3. Where there is a 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 the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; 7. When the findings are contrary to those of the trial court; 8. When the findings of fact 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 respondents; and 10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record." Hence, if the lower court committed palpable error or gravely misappreciated facts in arriving at a conclusion, this Court has the full authority to pass upon issues despite being factual in character.

APPEARANCES OF COUNSEL

Socrates R. Rivera for petitioners.
Clint M. Fernandez co-counsel for petitioners.
Alcala Dumlao Alameda Casiding & Tan for respondent China Banking Corporation.

D E C I S I O N

MENDOZA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court,[1] filed by Spouses Joven Sy and Corazon Que Sy *(petitioners),* assails the December 15, 2014 Decision[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 97482, which affirmed the May 21, 2010 Decision[3] of the Regional Trial Court, Branch 139, Makati City *(RTC),* in Civil Case No. 04-1215, ordering petitioners to pay respondent China Banking Corporation *(China Bank)* the deficiency balance of their loan obligation.

Factual Antecedents

Three promissory notes *(PN)*[4] were executed by petitioners in favor of China Bank. The first amounted to ₱8,800,000.00, designated as PN No. 5070016047; the second covering ₱5,200,000.00, designated as PN No. 5070016030; and the third involving ₱5,900,000.00, designated as PN No. 5070014942. Under PN Nos. 5070016047 and 5070016030, petitioners promised to pay China Bank the due amounts within a period of 351 days on or before June 14, 2002 with interest payable in advance for 15 days from June 28, 2001 to July 13, 2001 at 16% per annum, with the succeeding interest payable starting

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[1] *Rollo,* pp. 13-29.

[2] *Id*. at 34-44. Penned by Associate Justice Leoncia Real-Dimagiba, with Associate Justices Rebecca De Guia-Salvador and Ricardo R. Rosario, concurring.

[3] *Id*. at 187-193. Penned by Judge Benjamin T. Pozon.

[4] *Id*. at 164-166.

July 13, 2001 and every month thereafter until fully paid at the prevailing rate as determined on the date of interest payment. In PN No. 5070014942, petitioners promised to pay the principal amount at the rate of ₱100, 000.00 monthly for a period of 59 months with interest payable monthly at prevailing rates, initially at 23.5%. Part of the terms of the PNs was an agreement for petitioners to pay jointly and severally penalty charges equivalent to 1/10 of 1% per day of the total amount due should they default, payable and due from the date of default until fully paid. Petitioners also agreed to pay 10% of the total amount due as attorney's fees. The said PNs were also secured by a real estate mortgage[5] over petitioners' property covered by TCT No. N-155159.

Petitioners, however, failed to comply with their obligation which eventually amounted to a total of ₱28,438,791.69. This forced China Bank to foreclose the mortgaged property on February 26, 2004. The foreclosure sale yielded ₱14,500,000.00 only. There being a deficiency, China Bank demanded in a letter,[6] dated April 19, 2004, that petitioners settle the balance in the amount of ₱13,938,791.69, but to no avail.

China Bank then filed its complaint for sum of money before the RTC praying that judgment be rendered ordering petitioners to pay, jointly and severally, the amount of ₱13,938,791.69 representing the amount of deficiency, plus interest at the legal rate, from February 26, 2004 until fully paid; an additional amount equivalent to 1/10 of 1% per day of the total amount, until fully paid, as penalty; an amount equivalent to 10% of the said amounts as attorney's fees and expenses of litigation; and costs of suit.

During the trial, petitioners failed to appear despite notice for the initial presentation of defendants' evidence. Thus, in its Order,[7] dated February 16, 2010, the RTC considered the case submitted for decision on the basis of the evidence presented by China Bank.

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[5] *Id*. at 160-163.

[6] *Id*. at 61.

[7] *Id*. at 184.

Ruling of the RTC

In its May 21, 2010 Decision, the RTC ruled in favor of China Bank, recognizing the latter's right to the deficiency balance in the amount of ₱13,938,971.69, as per the computations adduced by China Bank.

It, however, held as unconscionable the penalty charges stipulated in the PNs amounting to 1/10 of 1% per day or 3% per month, compounded. Anchoring on its authority under Art. 1229[8] of the Civil Code, the RTC reduced the penalty charges to only 1% on the principal loan for every month of default. It also sustained the payment of attorney's fees but modified the amount for being unreasonable to only ₱100,000.00 instead of the 10% of the total amount due. Thus, it disposed:

WHEREFORE, **premises considered,** judgment is hereby rendered in favor of plaintiff China Banking Corporation and against the defendant spouses Joven Sy and Corazon Que Sy ordering the latter to jointly and severally pay the former the following:

(a) The deficiency balance of ₱13,938,791.69 plus interest thereon at the rate of 12% per annum from the date of extrajudicial demand on 19 April 2004;
(b) A 1% penalty on the said deficiency balance for every month of default;
(c) The amount of ₱100,000.00 as and by way of attorney's fees; and
(d) Costs of suit.

Furnish copies of this Decision to the parties and their respective counsels.

SO ORDERED.[9]

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[8] Article 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[9] *Rollo,* p. 193.

Petitioners moved for reconsideration, but their motion was denied by the RTC in its June 7, 2011 Order.[10] Petitioners then appealed the case before the CA.

Ruling of the CA

On December 15, 2014, the CA affirmed the ruling of the RTC explaining that China Bank was able to preponderantly support its claims; that petitioners should indeed pay the balance plus 12% legal interest there being no agreement as to the rate; and that the penalty charges of 1% for every month of default modified by the RTC was proper because the agreed rate was iniquitous and unconscionable.[11]

Petitioners did not move for reconsideration, but instead filed this petition before this Court, with the following

ASSIGNMENT OF ERRORS

1. The Honorable Court of Appeals in affirming the Decision of the Honorable Lower Court, failed to appreciate the fact that after finding that the imposition by the Respondent of compounded penalty of 3% monthly on the loan as unconscionable and reduced the same to 1% per month, overlooked the fact that on Exhibit E, for the Respondent to arrive at the amount of their claim ₱28,438,791.69 as of February 26, 2004 they have imposed compounded penalties of 3% monthly. If the proper imposition of 1% monthly be made then the deficiency balance should be much lower if not nil;

2. The Honorable Court of Appeals failed to appreciate the fact that after finding that the imposition of attorney's fees of 10% on the total obligation have overlooked the fact that on exhibit E, for the Respondent to arrive at the amount of their claim ₱28,438,791.69 as of February 26, 2004 they have imposed ₱2,585,344.70!!!!! as attorney's fees, the fee which the Honorable Court of Appeals have substantially reduced to ₱100,000.00 only;

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[10] *Id*. at 197-198. Penned by Judge Benjamin T. Pozon.

[11] *Id*. at 43.

3. If the penalties imposed by the Promissory Note and the Real Estate Mortgage as well as attorney's fees were struck down as unconscionable, then the terms and conditions of the Promissory Note is null and void and the very obligation must be recomputed at legal interest of 12% only;

4. The case must therefore be remanded back for the computation of the proper amount of the obligation and as to the deficiency.[12]

Petitioners ascribe as error, on the part of the CA, its computation of the penalty charges because the basis for arriving at the deficiency balance was still the agreed rate of 1/10 of 1% per day instead of the 1% per month of default imposed by the RTC. They also argue that the attorney's fees should have been computed on the basis of the modified amount and that because the penalties were struck down as unconscionable, then the terms and conditions of the PNs should have been declared null and void as a whole.

China Bank counters that petitioners violated the basic rules of fair play and justice as the issues raised were made only on appeal; that such issues, being factual in nature, were beyond the province of this Court because only questions purely of law may be raised at this stage; and that the RTC and the CA did not misappreciate the evidence, law and jurisprudence as their conclusions were supported by substantial evidence and jurisprudential rulings. China Bank, thus, prays for the denial of the petition claiming lack of merit.[13]

The Court's Ruling

A reading of the positions of the parties reveal that the issue at hand centers on the mathematical correctness of the computations in determining the amount of petitioners' deficiency balance. Stated another way, the issue is simply whether the CA erred in finding no reversible error on the part of the RTC in affirming the computed amount of petitioners' liability as

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[12] *Id*. at 18-19.

[13] See China Bank's Comment, *id*. at 276-292.

stated in the dispositive portion of the RTC decision. Stripped of non-essentials, petitioners question why the dispositive portion of the RTC ruling, which was affirmed by the CA, declared that the amount due remained at ₱13,938,791.69, computed net of the foreclosure earnings, considering that before arriving at that figure, the penalty charges on each PN were based on the agreed 1/10 of 1% rate per day instead of the 1% rate per month as reduced by the RTC as well as the fact that attorney's fees were computed at 10% of the total amount due instead of the reduced amount of ₱100,000.00. To petitioners, the CA should have noticed the inconsistency and corrected the same in reviewing the case. For all these reasons, petitioners now seek the remand of the case to the RTC for re-computation.

The petition is partly meritorious.

Mathematical computations are painted in jurisprudence as factual determinations[14] and, thus, generally beyond the province of this Court as it is not a trier of facts.[15] Thus, when supported by substantial evidence, the mathematical computations of the appellate court and the lower court are conclusive and binding on the parties and are not reviewable by this Court. The Court, however, has the option to decide the case in the exercise of its sound discretion and despite having to deal with factual issues in an appeal by *certiorari*, taking into account the attendant circumstances,[16] particularly if the following conditions exist:

1. **When the conclusion is a finding grounded entirely on speculation, surmises and conjectures**;
2. **When the inference made is manifestly mistaken, absurd or impossible;**
3. Where there is a grave abuse of discretion;

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[14] See *National Transmission Corporation v. Alphaomega Integrated Corporation*, G.R. No. 184295, July 30, 2014, 731 SCRA 299, 307.

[15] *Aliño v. Heirs of Angelica A. Lorenzo*, 578 Phil. 698, 706 (2008); *Diesel Construction Co., Inc. v. UPSI Property Holdings, Inc.*, 572 Phil. 494, 511 (2008).

[16] See *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals,* 370 Phil. 150 (1999).

4. **When the judgment is based on a misapprehension of facts**;
5. **When the findings of fact are conflicting**;
6. When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
7. When the findings are contrary to those of the trial court;
8. When the findings of fact 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 respondents; and
10. When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[17]

Hence, if the lower court committed palpable error or gravely misappreciated facts in arriving at a conclusion, this Court has the full authority to pass upon issues despite being factual in character. In this case, petitioners request that this Court do the same arguing that the RTC and the CA misappreciated the facts and committed a blatant error in coming up with the amounts it should be held liable to China Bank.

The Court agrees in part.

Undisputed is the fact that China Bank only sought the collection of the deficiency balance from petitioners to cover the amounts petitioners promised to pay as evinced by three PNs. In other words, China Bank was no longer collecting under the terms of the three PNs issued by petitioners, but was anchoring all its claims on its right to the deficiency balance owed by petitioners after failing to recover the full amount due from the foreclosure sale of the mortgaged property.

It finds similarity in the case of *BPI Family Savings Bank, Inc. v. Spouses Avenido*,[18] where the petitioner therein sought

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[17] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *Insular Life Assurance Company, Ltd. v. CA*, G.R. No. 126850, April 28, 2004, 428 SCRA 79.

[18] 678 Phil. 148 (2011).

to collect from the respondents the deficiency balance after also failing to recover in a foreclosure sale the full amount of the obligations due. There, two figures were found to be material by the Court. *First* was the amount of the outstanding obligation, inclusive of interests, penalty and charges. *Second* was the value to be attributed to the foreclosed property, which would be applied against the outstanding loan obligation of the respondents to the petitioner. The only perceptible difference is that the issue there centered on the value of the foreclosed property to be imputed against the outstanding loan, while here, the questioned value is the outstanding obligation itself.

In its submission to the RTC, China Bank stated that petitioners' deficiency balance as of February 26, 2004, the date of the foreclosure sale, amounted to ₱13,938,791.69. The RTC later ruled in China Bank's favor and declared petitioners liable for that amount plus interest thereon at the rate of 12% *per annum* from the date of the extrajudicial demand on April 19, 2004.

Apparently, the said amount was arrived at after the computation of the component penalty charges due at the agreed rate of 1/10 of 1% per day of default, plus the principal amount and then added thereto the attorney's fees at the agreed rate of 10% of the total obligation, and the subtraction from the computed amount of the net proceeds realized from the foreclosure. Obvious also is the fact that the interest charges forming part of the deficiency balance were computed at the prevailing interest rate on a daily basis using 360 days as divisor per China Bank's computation. All these were blatantly erroneous computations for the following reasons:

First, on the penalty charges, it is clear that the computation should be at the rate of 1% per month as held by the RTC instead of 1/10 of 1% per day or 3% per month compounded as agreed upon by the parties. The RTC explicitly declared such agreed rate as unconscionable. It wrote:

> Now with respect to the penalty charges stipulated in the Promissory Notes. The Promissory Notes executed by the parties uniformly provided for the payment of an amount equivalent to 1/10 of 1% per day compounded monthly of the amount due or the payment

of 3% penalty compounded monthly. This surcharge or penalty partakes of the nature of liquidated damages under Article 2227 of the Civil Code of the Philippines, and is separate and distinct from interest payment.

Also referred to as a penalty clause, it is expressly recognized by law. It is an accessory undertaking to assume greater liability on the part of the obligor in case of breach of an obligation. The obligor would then be bound to pay the stipulated amount of indemnity without the necessity of proof on the existence and on the measure of damages caused by the breach. Although the courts may not at liberty ignore the freedom of the parties to agree on such terms and conditions as they see fit that contravene neither law nor morals, good customs, public order or public policy, a stipulated penalty, nevertheless, may be equitably reduced if it's iniquitous or unconscionable.

Article 1229 of the Civil Code provides:

> "Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable."

In the case at bar, this Court finds the 3% stipulated penalty to be iniquitous and unconscionable. Applying the ruling of the Supreme Court in *Ruiz v. Court of Appeals, supra,* a 1% penalty on the principal loan for every month of default is proper under the circumstances.[19]

Thus, in holding petitioners liable for the deficiency balance of ₱13,938,791.69, the computation of which already included penalty charges at the rate of 1/10 of '1% per day, the RTC committed a palpable error and contradicted its own ruling. The penalty charges and, necessarily, the deficiency balance, should have been computed much lower after applying the reduced rate of 1 % per month of default. To be exact, petitioner's total penalty charges should only amount to ₱1,849,541.26 and not ₱5,548,623.78.

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[19] *Rollo,* pp. 192-193.

Covered period is from 04/30/03 to 02/26/04 or 302 days	At 1/10 of 1% per day based on PN	At 1% per month based on RTC ruling
PN#5070016047 (₱8,800,000.00)	2,657,600.00	885,866.67
PN#5070016030 (₱5,200,000.00)	1,570,400.00	523,466.67
PN#5070014942 (₱4,372,926.43)	1,320,623.78	440,207.93
TOTAL	**₱ 5,548,623.78**	**₱ 1,849,541.26**

Second, as held by the RTC, the deficiency balance was based on interest charges computed at the prevailing market rates but with the divisor, used to arrive at the daily basis of the interest rates per annum by China Bank, at 360 days. For instance, for the period of April 30, 2003 to May 30, 2003 covering 30 days and with a prevailing market rate of 13% per annum, the interest charges stood at ₱95,333.33. This was arrived at by using the following formula: amount of loan x interest rate per annum / 360 days x number of days covered by the period. Thus ₱8,800,000 x 13%/360 x 30 = ₱95,333.33. To the Court, this was erroneous.

Article 13[20] of the Civil Code provides that when the law speaks of years it shall be understood that years are of 365 days each and not 360 days. There being no agreement between the parties, this Court adopts the 365 day rule as the proper reckoning point to determine the daily basis of the interest rates charged *per annum*.

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[20] Art. 13. Civil Code. When the laws speak of years, months, days or nights, it shall be understood that years are of three hundred sixty-five days each; months, of thirty days; days, of twenty-four hours; and nights from sunset to sunrise.

If months are designated by their name, they shall be computed by the number of days which they respectively have.

In computing a period, the first day shall be excluded, and the last day included.

Verily, instead of being liable for interest charges in the amount of ₱1,938,216.15, petitioners should have been adjudged only liable for ₱1,911,665.24.

Adding the interest charges plus penalty and the principal amount due as of the date of the foreclosure sale would show that the outstanding obligation of petitioners stood only at ₱22,134,132.93.

Third, the attorney's fees to be paid by petitioners as agreed upon should then be added to the total outstanding balance computed above. The RTC, however, in adopting the computation of China Bank *in toto,* did not notice that it included attorney's fees in the amount of ₱2,585,344.70 representing 10% of the total amount as stated in the PNS. This was clearly improper and contrary to its pronouncement reducing the attorney's fees to only ₱100,000.00. To recall, the RTC itself declared that the 10% of the total amount due for attorney's fees was unreasonable and immoderate, to wit:

> The Court likewise sustains the prayer for the payment of attorney's fees and costs of suit as this was expressly stipulated in the Promissory Notes executed by the parties. However, with respect to the award of attorney's fees, as ruled by the Supreme Court in *Estrella Palmares vs. Court of Appeals and M.B. Lending Corporation (G.R. No. 126490, 31 March 1998),* "even with an agreement thereon between the parties, the court may nevertheless reduce such attorney's fees fixed in the contract when the amount thereof appears to be unconscionable or unreasonable. To that end, it is not even necessary to show, as in other contracts, that it is contrary to morals or public policy." The grant of attorney's fees equivalent to 10% of the total amount due, including interest, charges, and penalties, as stipulated by the parties is, in the opinion of this Court, unreasonable and immoderate, considering the extent of the work in this simple action for collection of sum of money. This Court therefore holds that the amount of ₱100,000.00 as and for attorney's fees would be sufficient in this case.[21]

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[21] *Rollo,* p. 193.

Unfortunately, the CA also failed to take note of this plain oversight by the RTC.

Thus, with the ₱100,000.00 representing attorney's fees, the amount of the outstanding balance should now amount to only **₱22,234,132.93.** And because China Bank already realized **₱14,500,000.00** from the foreclosure of petitioners' mortgaged property, the outstanding balance should stand only at **₱7,734,132.93.** Thus:

PN#5070016047

	INTEREST				INTEREST
OUTSTANDING BALANCE	FROM	TO	DAYS	RATE	DUE
8,800,000.00	30-Apr-03	30-May-03	30	13.00%	94,027.40
8,800,000.00	30-May-03	30-Jun-03	31	12.75%	95,293.15
8,800,000.00	30-Jun-03	30-Jul-03	30	12.50%	90,410.96
8,800,000.00	30-Jul-03	31-Aug-03	32	12.50%	96,438.36
8,800,000.00	31-Aug-03	30-Sep-03	30	12.50%	90,410.96
8,800,000.00	30-Sep-03	31-Oct-03	31	12.50%	93,424.66
8,800,000.00	31-Oct-03	30-Nov-03	30	12.50%	90,410.96
8,800,000.00	30-Nov-03	31-Dec-03	31	12.50%	93,424.66
Interest Due (04/30/03 to 12/31/03)					743,841.10
Add: Penalty charged computed per RTC ruling					
(₱8,800,000.00 from 04/30/03 to 12/31/03 or 245 days @ 1% per month)					718,666.67
Total interest Due & Penalty Charged (04/30/03-12/31/03)					**1,462,507.76**
8,800,000.00	31-Dec-03	31-Jan-04	31	12.50%	93,424.66
8,800,000.00	31-Jan-04	26-Feb-04	26	12.50%	78,356.16
Interest Due (12/31/03 to 02/26/04)					171,780.82
Add: Penalty charged computed per RTC ruling					
(₱8,800,000.00 from 12/31/03 to 02/26/04 or 57 days @ 1% per month)					167,200.00
Total interest Due & Penalty Charged (12/31/03-02/26/04)					**338,980.82**
SUB-TOTAL					**1,801,488.58**

PN#5070016030

5,200,000.00	30-Apr-03	30-May-03	30	13.00%	55,561.64
5,200,000.00	30-May-03	30-Jun-03	31	12.75%	56,309.59
5,200,000.00	30-Jun-03	30-Jul-03	30	12.50%	53,424.66
5,200,000.00	30-Jul-03	31-Aug-03	32	12.50%	56,986.30
5,200,000.00	31-Aug-03	30-Sep-03	30	12.50%	53,424.66
5,200,000.00	30-Sep-03	31-Oct-03	31	12.50%	55,205.48
5,200,000.00	31-Oct-03	30-Nov-03	30	12.50%	53,424.66
5,200,000.00	30-Nov-03	31-Dec-03	31	12.50%	55,205.48
Interest Due (04/30/03 to 12/31/03)					439,542.47
Add: Penalty charged computed per RTC ruling					
(₱5,200,000.00 from 04/30/03 to 12/31/03 or 245 days @ 1% per month)					424,666.67
Total interest Due & Penalty Charged (04/30/03-12/31/03)					**864,209.13**
5,200,000.00	31-Dec-03	31-Jan-04	31	12.50%	55,205.48
5,200,000.00	31-Jan-04	26-Feb-04	26	12.50%	46,301.37
Interest Due (12/31/03 to 02/26/04)					101,506.85
Add: Penalty charged computed per RTC ruling					
(₱5,200,000.00 from 12/31/03 to 02/26/04 or 57 days @ 1% per month)					98,800.00
Total interest Due & Penalty Charged (12/31/03-02/26/04)					**200,306.85**
SUB-TOTAL					**1,064,515.98**

PN#5070014942

4,372,926.43	30-Apr-03	30-May-03	30	13.00%	46,724.42
4,372,926.43	30-May-03	30-Jun-03	31	12.75%	47,353.40
4,372,926.43	30-Jun-03	30-Jul-03	30	12.50%	44,927.33
4,372,926.43	30-Jul-03	31-Aug-03	32	12.50%	47,922.48
4,372,926.43	31-Aug-03	30-Sep-03	30	12.50%	44,927.33
4,372,926.43	30-Sep-03	31-Oct-03	31	12.50%	46,424.90
4,372,926.43	31-Oct-03	30-Nov-03	30	12.50%	44,927.33
4,372,926.43	30-Nov-03	31-Dec-03	31	12.50%	46,424.90
Interest Due (04/30/03 to 12/31/03)					369,632.09

Add: Penalty charged computed per RTC ruling					
(₱4,372,926.43 from 04/30/03 to 12/31/03 or 245 days @1% per month)					357,122.33
Total interest Due & Penalty Charged (04/30/03-12/31/03)					**726,754.41**
4,372,926.43	31-Dec-03	31-Jan-04	31	12.50%	46,424.90
4,372,926.43	31-Jan-04	26-Feb-04	26	12.50%	38,937.02
Interest Due (12/31/03 to 02/26/04)					85,361.92
Add: Penalty charged computed per RTC's ruling					
(₱4,372,926.43 from 12/31/03 to 02/26/04 or 57 days @ 1% per month)					83,085.60
Total interest Due & Penalty Charged (12/31/03-02/26/04)					**168,447.52**
SUB-TOTAL					**895,201.94**
Computation:					
Total Interest Due from 3 PNS					1,911,665.24
Total Penalty Charges from 3 PNS					1,849,541.26
Add: Principal (3 PNS)					18,372,926.43
Add: Attorney's Fees					100,000.00
TOTAL INTEREST DUE, PENALTY CHARGE[D], and PRINCIPAL, (AS OF 02/26/2004)					**22,234,132.93**
Less: BID PRICE					14,500,000.00
DEFICIENCY BALANCE					**₱7,734,132.93**

Despite all these errors, however, China Bank argues that what the petitioners are doing is introducing new issues only on appeal, which is not allowed.

The Court disagrees.

As correctly stated by petitioners, their theory indeed never changed, and there was neither new evidence presented nor an attempt to prove that no liability existed. Petitioners were merely asking the Court to look into the mathematical correctness of the computations of the RTC, pointing out obvious inconsistencies and, in the process, for this Court to correct them. Indeed, this Court could have just remanded the case to the lower court; but in the interest of speedy disposition of cases, this Court decided to resolve the issues and make the

necessary corrections. If these errors were left unchecked, justice would not have been served.

Additionally, an interest of twelve (12) percent *per annum* on the deficiency balance to be computed from April 19, 2004 until June 30, 2013, and six (6) percent *per annum* thereafter, until fully satisfied, should be paid by the petitioners following Bangko Sentral ng Pilipinas Monetary Board Resolution No. 796, dated May 16, 2013, and its Circular No. 799, Series of 2013, together with the Court's ruling in *Nacar vs. Gallery Frames*.[22] An interest of 1% per month is no longer imposed as the terms of the PNs no longer govern. As explained earlier, China Bank's claims are based now solely on the deficiency amount after failing to recover everything from the foreclosure sale on February 26, 2004.

WHEREFORE, the petition is **PARTLY GRANTED**. The December 14, 2014 Decision of the Court of Appeals is hereby modified to read as follows:

> **WHEREFORE**, premises considered, the instant appeal is hereby DENIED. The challenged decision, dated 21 May 2010, as well as the order, dated 7 June 2011, are hereby **AFFIRMED** with **MODIFICATIONS.** Respondent spouses Joven Sy and Corazon Que Sy are **ORDERED** to pay petitioner China Banking Corporation **P7,734,132.93,** representing the deficiency of their obligation, net of the proceeds of the foreclosed property, plus legal interest of 12% *per annum* from April 19, 2004 until June 30, 2013, and 6% per annum thereafter, until fully satisfied.

SO ORDERED.

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

Brion, J., on leave.

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[22] 716 Phil. 267 (2013).

EN BANC

[A.M. No. P-13-3113. August 2, 2016]

ROSEMARIE GERDTMAN, represented by her sister and Attorney-in-fact, ROSALINE LOPEZ BUNQUIN, *complainant, vs.* **RICARDO V. MONTEMAYOR, JR., Sheriff IV, Office of the Provincial Sheriff, Calapan City, Province of Oriental Mindoro,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; GRAVE MISCONDUCT; A DISREGARD OF THE ESTABLISHED RULES CONSTITUTES GRAVE MISCONDUCT FOR WHICH THE PENALTY OF DISMISSAL IS IMPOSABLE FOR THE FIRST OFFENSE.— [W]e find several procedural lapses in Sheriff Montemayor's conduct of the auction sale, which make him guilty of grave misconduct. First, instead of personally serving the notice of the execution sale to the judgment obligor, Sheriff Montemayor sent the notice via registered mail, in transgression of Section 15 (d), Rule 39 of the Rules x x x. Second, Sheriff Montemayor stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice, Provincial Capitol Complex, Camilmil, Calapan City. The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution. x x x Third, Sheriff Montemayor deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. x x x Instead of returning the excess amount from the auction sale to complainant as required in the Rules, Sheriff Montemayor allegedly applied it to the costs of suit. However, he failed to exhibit proof that the 2008 Writ directed him to make such application. He also did not present a court-approved computation of the costs of suit. x x x The foregoing series of procedural lapses committed by Sheriff Montemayor shows misconduct in service. Misconduct is the transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a

public officer. x x x Here, Sheriff Montemayor's misconduct is not only simple but has gone across being grave or gross for which the penalty of dismissal is imposable for the first offense. There is grave misconduct when the misconduct involves any of the additional element of corruption, willful intent to violate the law, or **disregard of the established rules**. x x x Significantly, this is not the first time that we administratively dealt with Sheriff Montemayor. In *Proserfina Nogaliza v. Ricardo Montemayor, Jr.,* we held Sheriff Montemayor liable for conduct prejudicial to the best interest of the service where he was meted the penalty equivalent to a fine of one (1) month salary. x x x Hence, for Sheriff Montemayor's successive commission of serious offenses, the appropriate penalty is dismissal from service.

2. ID.; ID.; ID.; ID.; ID.; MERELY PERFORM MINISTERIAL, NOT DISCRETIONARY FUNCTIONS IN THE PERFORMANCE OF THEIR DUTIES, AND THEY ARE DUTY-BOUND TO KNOW THE BASIC RULES RELATIVE TO THE IMPLEMENTATION OF WRITS OF EXECUTION.— [T]he sheriff and his deputies merely perform ministerial, not discretionary functions in the performance of their duties, sheriffs are supposed to execute orders of the court strictly to the letter of the order and the governing law. They are not supposed to decide and interpret for themselves unclear wordings of the judgment or order. x x x We often stress that sheriffs, by the very nature of their duties, perform a very sensitive function in the dispensation of justice. They are duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of their duties. Otherwise, the Judiciary would be filled with incompetent personnel acting on their personal beliefs and opinions rather than on established rules and principles of law.

3. ID.; ID.; ID.; DISHONESTY, DEFINED; A CLAIM OF DISHONESTY MUST BE SUPPORTED BY EVIDENCE.— [W]e do not agree with the OCA that Sheriff Montemayor is guilty of dishonesty. Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray. Complainant's theory that Sheriff Montemayor pocketed the excess bid price, simply because he did not give

the proceeds to complainant is unfounded. Complainant did not present evidence in connection with this claim. Mere suspicion without anything more cannot sway judgment.

APPEARANCES OF COUNSEL

Marcus C.S. Hernandez for complainant.

D E C I S I O N

***PER CURIAM*:**

We have ruled time and again that sheriffs are keepers of the public faith. Inevitably in close contact with litigants, sheriffs should maintain obedience to the law and the rules and observe circumspection in their behavior. Any conduct short of these shall not be tolerated and we will not hesitate to impose the supreme penalty of dismissal to purge the Judiciary from undeserving individuals.

The Case

For our consideration is the Complaint-Affidavit[1] filed by Rosemarie Gerdtman (Complainant) charging Ricardo V. Montemayor, Jr. (Sheriff Montemayor), Sheriff IV at the Office of the Provincial Sheriff of Calapan City, Oriental Mindoro with (1) gross misconduct, (2) dishonesty and (3) conduct prejudicial to the interest of the service.

The Office of the Court Administrator (OCA) recommended that Sheriff Montemayor be found guilty of grave misconduct and dishonesty and be dismissed from service.

The Facts

Complainant was one of the defendants in Civil Case No. 299,[2] an action for unlawful detainer, filed by a certain

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

[2] *Emilio Mingay v. Antero Lopez, Rosemarie Lopez Gerdtman and Rosalyn Lopez Bunquin, id.* at 14.

Emilio Mingay (Mingay) before the First Municipal Circuit Trial Court of Baco-San Teodoro-Puerto Galera (MCTC). Mingay is the registered owner of a parcel of land located at Barangay Sabang, Puerto Galera, Oriental Mindoro, a portion of which was leased by the defendants.[3] In a Decision[4] dated January 5, 2000, the MCTC ruled in favor of Mingay, to wit:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered for the plaintiff and against the defendants ordering them and all persons claiming rights under them to vacate and surrender possession of the subject premises to the plaintiff, as well as, to pay the following:
>
> 1. For Defendant Rosemarie Lopez Gerdtman, to pay Plaintiff the amount of SEVEN HUNDRED SIXTY THOUSAND FIVE HUNDRED FORTY-SEVEN PESOS (₱760,547.00) in satisfaction of the accrued rentals with escalation rate of TEN PER CENTUM (10%) per annum from January 06, 1988 up to and including December 31, 1999 and thereafter to pay the sum of EIGHT THOUSAND FIVE HUNDRED FIFTY-SEVEN PESOS (₱8,557.00) as monthly rental beyond December 31, 1999 until she vacates the premises in question;
>
> 2. For Defendants Antero Lopez, Rosemarie Lopez Gerdtman and Rosalyn Lopez Bunquin, to pay jointly and severally Plaintiff the sum of SEVEN THOUSAND TWO HUNDRED PESOS (₱7,200.00) as rentals for nine (9) months during the period covering the implied new lease;
>
> 3. For all the Defendants, to pay jointly and severally the Plaintiff the amount of TWENTY THOUSAND (₱20,000.00) as attorney's fees; and[]
>
> 4. Costs of suit.[]
>
> SO ORDERED.[5]

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[3] *Id*. at 14-15.

[4] *Id*. at 14-18. Penned by Judge Designate Manolo A. Brotonel.

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

On January 18, 2000, Mingay filed a Motion for Immediate Execution of Judgment.[6] The MCTC issued a Writ of Execution[7] on January 27, 2000 (2000 Writ). Defendants did not appeal the MCTC Decision but filed Civil Case No. R-4846 instead, a petition for annulment of judgment of the MCTC Decision in Civil Case No. 299. It was filed before Branch 40 of the Regional Trial Court (RTC) of Calapan City.[8] This halted the enforcement of the 2000 Writ, with the RTC restraining its enforcement for 20 days.[9] Eventually, in the Return[10] he filed, Sheriff Jaime V. Abas (Sheriff Abas) reported that a Notice of Levy on a land owned by complainant and covered by Transfer Certificate of Title (TCT) No. T-32779 was registered on March 1, 2000 with the Register of Deeds of Calapan City.[11]

In the meantime, on May 9, 2000, the RTC dismissed the petition for annulment of judgment for lack of merit.[12] On May 23, 2000, Sheriff Abas continued to implement the 2000 Writ but complainant refused to vacate the leased premises.[13] Defendants then filed an appeal to the Court of Appeals (CA), which affirmed the RTC.[14] The case was further elevated to us via a Petition for Review on *Certiorari*. On March 12, 2007, we denied the petition and our resolution became final and executory on July 18, 2007.[15]

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[6] *Id.* at 321.

[7] *Id*. at 322-324.

[8] *Id.* at 19, 21.

[9] *Id*. at 281.

[10] *Id*. at 281-282.

[11] *Id*. at 283-287.

[12] *Id.* at 67, 281.

[13] *Id.* at 281.

[14] *Id.* at 19-26.

[15] *Id.* at 27.

Consequently, Civil Case No. 299 attained finality. Mingay then filed another Motion for Issuance of a Writ of Execution[16] with the MCTC. A Writ of Execution[17] dated June 26, 2008 (2008 Writ) was issued directing the implementation of the January 5, 2000 Decision of the MCTC.

Complainant thereafter filed the present administrative complaint before us, alleging that Sheriff Montemayor made it appear that the levied property was sold in public auction on March 17, 2009 for the bloated amount of ₱5 million. She claims that the sale was dubious, if not purely simulated. We quote her grounds in *verbatim*:

a) [T]he purported notice of auction sale was personally served by Sheriff Montemayor not on us but on a certain Dhorie dela Cruz who is not even the addressee and whose name was merely printed without any indication whether she did really receive it and on what day and time did she receive it, copy of which is hereto attached as **ANNEX "G".** The purported notice is clearly fabricated. Consequently, we were not duly notified of the scheduled auction sale, if such was scheduled, to enable us to take part, all in violation of our right to due process and Section 15 (d), Rule 39, Revised Rules of Court;

b) Aside from the absence of due written notice of the auction sale on us, there is nothing on record which will show strict compliance with the requirements of Section 15 (c);

c) [B]ased on the minutes of public auction sale, only one (1) bidder took part in the bidding, Emilio Mingay, in flagrant violation of A.M. 99-1005-SC requiring at least two (2) participating bidders to which Sheriff Montemayor cannot profess ignorance, copy of which is hereto attached under caption PRESENT as **ANNEX "H"**;

d) [A]ssuming arguendo that the public auction sale where Emilio Mingay supposedly bidded for PhP5,000,000 or in excess of the minimum bid of PhP2,600,00[0] was valid, Sheriff Montemayor, for reasons of his own, did not promptly deliver to my sister, the excess proceeds amounting to PhP2,400,000 in willful transgression of Section 19 of Rule 39 giving a ground for reasonable suspicion that Sheriff

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[16] *Id.* at 325-326.

[17] *Id.* at 327-329.

Montemayor pocketed or misappropriated the excess amount, to our great damage and prejudice.[18]

Complainant avers that since the land was sold over and above the monetary judgment, Sheriff Montemayor made it difficult for her to redeem the land within the one (1) year redemption period. As a result, Mingay was able to cause the cancellation of complainant's title.

In his Comment,[19] Sheriff Montemayor counters that complainant is guilty of forum shopping because she filed two (2) other suits against him: 1) Civil Case No. CV-10-6284,[20] which is a case for annulment of certificate of sale and confirmation of sale annotated at the back of TCT No. T-32779 filed before RTC of Calapan City, Branch 39; and 2) a complaint for anti-graft and corrupt practices act filed before the Office of the Ombudsman.[21] Sheriff Montemayor argues that the complaint is premature because Civil Case No. CV-10-6284 is still pending. Hence, there is no pronouncement yet that the implementation of the writ was fraught with irregularities.[22]

Moreover, Sheriff Montemayor avers that:

a. It was Sheriff Abas and not he who made the levy on March 1, 2000 through the Register of Deeds of Oriental Mindoro. This is evidenced by the annotation stated in TCT No. T-32779;[23]

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[18] *Id.* at 3-4.

[19] *Id.* at 266-269.

[20] Titled *Rosalyn Lopez Bunquin, for Herself and as Attorney-in-Fact for Rosemarie Gerdtman v. Emilio Mingay, Sheriff Ricardo V. Montemayor, Jr., and the Register of Deeds of Calapan City, Province of Oriental Mindoro*. *Id.* at 270-274.

[21] Titled *Rosemarie Gerdtman, Reperesented by her Sister and Attorney-in-Fact, Rosaline Lopez Bunquin v. Sheriff Richard Montemayor, Office of the Provincial Sheriff, Calapan City, Province of Oriental Mindoro*. *Id.* at 275-280.

[22] *Id.* at 267.

[23] *Id.* at 268.

b. He notified complainant and her family of the schedule of the auction sale as shown by the registry return card and the certification issued by the Postmaster of the Philippine Postal Corporation in Puerto Galera, Oriental Mindoro;[24]

c. He complied with Section 15 (c) of Rule 39 of the Revised Rules of Court (the Rules). He posted a Notice of Sheriff's Sale of Property on Execution at the mandated locations, such as: the main entrance of the Office of the Clerk of Court, the bulletin board of the Provincial Capitol Building and the Municipal Hall of Puerto Galera and the Barangay Hall of Sabang, Puerto Galera as evidenced by the Certificate of Posting;[25]

d. A.M. No. 99-10-05-0 does not prohibit the participation of only one (1) bidder in an auction sale;[26] and

e. The ₱5 million bid is considered small compared to the ₱16,935,737.00 demanded in the letter of Mingay's wife. Also, complainant and her family must pay the cost of the suit.[27]

Complainant filed a Reply[28] dated April 13, 2012 where she rebuts the defenses raised by Sheriff Montemayor and maintains that she is not guilty of forum shopping because the three (3) cases seek different reliefs. She also argues that as a sheriff, Sheriff Montemayor is duty bound to enforce only the writ of execution issued by the court and not the demand of the judgment obligee.[29] Complainant attacks the manner by which the writ was implemented, noting that Sheriff Montemayor immediately

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[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Rollo,* pp. 268-269.

[28] *Id.* at 248-254.

[29] *Id.* at 252-253.

levied upon complainant's real property without checking if her personal properties are sufficient. Complainant also observes that the minutes of the auction sale contain only meager facts on how the proceedings were had, not even stating whether the bid was paid in cash.[30]

OCA Recommendation

In its Report[31] dated January 21, 2013, the OCA found sufficient ground to hold Sheriff Montemayor administratively liable for grave misconduct and dishonesty. Preliminarily, the OCA ruled that no forum shopping exists and that the pendency of civil and criminal cases does not bar the filing of an administrative complaint. It found that Sheriff Montemayor has failed to perform what was expected of him under the rules. He has a ministerial duty to carry out only the judgment rendered by the court and not what the judgment obligee is demanding.[32] The OCA further noted that Sheriff Montemayor was previously found liable for conduct prejudicial to the best interest of the service and meted the penalty of fine equivalent to his one (1) month salary.[33] Hence, it recommended Sheriff Montemayor's dismissal from the service.[34]

Issue

Whether Sheriff Montemayor should be held administratively liable for the acts complained of.

Ruling

At the outset, to set the facts straight, it is correct that Sheriff Montemayor did not make the levy on complainant's property.

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[30] *Id.* at 251.

[31] *Id.* at 298-308.

[32] *Id.* at 304-306.

[33] *Id.* at 304.

[34] *Id.* at 308.

Per the Sheriff's Return dated May 29, 2000 and the inscription in TCT No. T-32779, it was Sheriff Abas who implemented the 2000 Writ. Thus, the allegation that Sheriff Montemayor erred in levying the land without first determining if complainant has sufficient personal property deserves scant consideration. Any irregularity on the levy of the real property cannot be imputed to him.

However, we find several procedural lapses in Sheriff Montemayor's conduct of the auction sale, which make him guilty of grave misconduct.

First, instead of personally serving the notice of the execution sale to the judgment obligor, Sheriff Montemayor sent the notice via registered mail, in transgression of Section 15 (d), Rule 39 of the Rules, which reads:

> Sec. 15. *Notice of sale of property on execution*. — Before the sale of property on execution, notice thereof must be given as follows:
>
> x x x x x x x x x
>
> (d) In all cases, written notice of the sale shall be given to the judgment obligor, at least three (3) days before the sale, except as provided in paragraph (a) hereof where notice shall be given at any time before the sale, **in the same manner as personal service of pleadings and other papers as provided by Section 6 of Rule 13.** (Emphasis ours.)

In *Villaceran v. Beltejar*,[35] we ruled that requirements for execution sales under Rule 39 of the Rules must be strictly complied with.[36] The Rules require personal service of the notice to ensure that the judgment obligor will be given a chance to prevent the sale by paying the judgment debt sought to be enforced.[37] If only Sheriff Montemayor personally served the notice, there would be no question on who "Dhorie dela Cruz"

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[35] A.M. No. P-05-1934, April 11, 2005, 455 SCRA 191.

[36] *Id.* at 196-198.

[37] *Venzon v. Juan,* G.R. No. 128308, April 14, 2004, 427 SCRA 237, 243-244.

is and there would be no issue on whether the complainant has knowledge of the sale.[38]

Second, Sheriff Montemayor stated in the notice of execution sale that the sale shall be held at the main entrance of the Hall of Justice, Provincial Capitol Complex, Camilmil, Calapan City.[39] The Rules, however, require that for property not capable of manual delivery, the sale shall be held at the office of the clerk of court of the regional trial court that issued the writ of execution.[40] In *Villaceran*, we held the sheriff therein liable for ignorance of this rule, as well.

Third, Sheriff Montemayor deviated from his ministerial duty in executing the 2008 Writ when he decided that the excess from the execution sale shall cover the costs of suit. Section 19, Rule 39 of the Rules provides:

> Sec. 19. *How property sold on execution*; *who may direct manner and order of sale*. — All sales of property under execution must be made at public auction, to the highest bidder, to start at the exact time fixed in the notice. **After sufficient property has been sold to satisfy the execution, no more shall be sold and any excess property or proceeds of the sale shall be promptly delivered to the judgment obligor or his authorized representative, unless otherwise directed by the judgment or order of the court.** When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the same and in such parcels as are likely to bring the highest price. The judgment obligor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer conducting the execution sale, nor his deputies, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale. (Emphasis ours.)

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[38] *Rollo*, p. 3.

[39] *Id.* at 292.

[40] REVISED RULES OF COURT, Rule 39, Sec. 15.

On the other hand, Section 8, Rule 142 of the Rules provides how costs of suit are taxed:

> Sec. 8. *Costs, how taxed.* — **In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment.** In superior courts, costs shall be taxed by the clerk of the corresponding court on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution. (Emphasis ours.)

Instead of returning the excess amount from the auction sale to complainant as required in the Rules, Sheriff Montemayor allegedly applied it to the costs of suit. However, he failed to exhibit proof that the 2008 Writ directed him to make such application. He also did not present a court-approved computation of the costs of suit. Rather than showing the legal basis for his actuation, Sheriff Montemayor took refuge on the letter of Mingay's wife. Thus, in his Comment before us, he stated:

> With respect to complainant's allegation that he [pertaining to himself] should have delivered to her sister [the complainant] the excess proceeds of the auction sale as the alleged minimum bid representing the accrued rentals and attorney's fees is only ₱2,600,000.00, the undersigned Sheriff asserts that there were no excess proceeds to deliver because of the costs of suit that should be paid by the complainant, her sister and their co-defendant Antero Lopez. **As a matter of fact the bid price of ₱5,000,000.00 is considered too small an amount and even short compared to the amount of ₱16,935,737.00 total payment being demanded by Emilio Mingay from Bunquin, her sister and their co-defendant Antero Lopez as decided by the court in Civil Case No. 299.** A copy of the letter dated February 18, 2009 x x x sent to the Office of the Clerk of Court and Ex-Officio Sheriff, RTC, Calapan City by Flordeliza P. Mingay, wife of Emilio Mingay is hereto attached.[41] (Emphasis ours.)

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[41] *Rollo,* pp. 268-269.

By his own words, Sheriff Montemayor casts **doubt** on his trustworthiness and propriety as an officer of the court. To our mind, Sheriff Montemayor allowed himself to be swayed or influenced by the letter of Mingay's wife who demanded ₱1,800,000.00 as costs of suit,[42] and which amount was not reflected in the 2008 Writ. The conduct of Sheriff Montemayor betrayed the foremost duty of sheriffs to execute the order of the court strictly to the letter. Sheriffs are under obligation to perform their duties honestly, **faithfully** and to the best of their ability; they must conduct themselves with propriety and decorum, and above all else, be **above suspicion**.[43]

Should Sheriff Montemayor find the MCTC decision confusing or wanting as to the cost of suit, he should have asked the MCTC for clarification. Sheriff Montemayor is expected to know the limits of his authority. We have frequently reiterated that the sheriff and his deputies merely perform ministerial, not discretionary functions in the performance of their duties, sheriffs are supposed to execute orders of the court strictly to the letter of the order and the governing law. They are not supposed to decide and interpret for themselves unclear wordings of the judgment or order.[44]

The foregoing series of procedural lapses committed by Sheriff Montemayor shows misconduct in service. Misconduct is the transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a

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[42] *Id.* at 295-297, letter from Flordeliza P. Mingay to the Office of the Clerk of Court & *Ex-Officio* Sheriff of RTC, Calapan City, dated January 18, 2009.

[43] *Musngi v. Pascasio*, A.M. No. P-08-2454, May 7, 2008, 554 SCRA 1, 13 citing *Letter of Atty. Socorro M. Villamer-Basilla, Clerk of Court V, RTC, Branch 4, Legaspi City*, A.M. No. P-06-2128, February 16, 2006, 482 SCRA 455, 459. (Emphasis ours.)

[44] *Eduarte v. Ramos*, A.M. No. P-94-1069, November 9, 1994, 238 SCRA 36, 40 citing *Young v. Momblan,* A.M. No. P-89-367, January 9, 1992, 205 SCRA 33. See also *Del Rosario v. Bascar, Jr.,* A.M. No. P-88-255, March 3, 1992, 206 SCRA 678.

public officer.[45] In *Tan v. Dael*,[46] we held that any act of deviation from the procedures is considered a misconduct that warrants disciplinary action.[47]

Here, Sheriff Montemayor's misconduct is not only simple but has gone across being grave or gross for which the penalty of dismissal is imposable for the first offense.[48] There is grave misconduct when the misconduct involves any of the additional element of corruption, willful intent to violate the law, or **disregard of the established rules**.[49]

We often stress that sheriffs, by the very nature of their duties, perform a very sensitive function in the dispensation of justice. They are duty-bound to know the basic rules relative to the implementation of writs of execution, and should, at all times show a high degree of professionalism in the performance of their duties.[50] Otherwise, the Judiciary would be filled with incompetent personnel acting on their personal beliefs and opinions rather than on established rules and principles of law.[51]

Further, in deviating from the Rules, Sheriff Montemayor also violated the Code of Conduct for Court Personnel[52] in the Judiciary, which mandates that court personnel are enjoined to

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[45] *Alconera v. Pallanan*, A.M. No. P-12-3069, January 20, 2014, 714 SCRA 204, 217.

[46] A.M. No. P-00-1392, July 13, 2000, 335 SCRA 513.

[47] *Id.* at 514.

[48] Pursuant to Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, the offense of "grave misconduct" is punishable by dismissal from service on the first offense.

[49] *Alconera v. Pallanan*, *supra*. (Emphasis ours.)

[50] *Pineda v. Torres*, A.M. No. P-12-3027, January 30, 2012, 664 SCRA 374, 379.

[51] *Villaceran v. Beltejar, supra* note 35 at 201 citing *Paner v. Torres*, A.M. No. P-01-1451, February 28, 2003, 398 SCRA 381.

[52] A.M. No. 03-06-13-SC, June 1, 2004.

"expeditiously enforce rules and implement orders of the court within the limits of their authority."[53]

However, we do not agree with the OCA that Sheriff Montemayor is guilty of dishonesty. Dishonesty is defined as the disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[54] Complainant's theory that Sheriff Montemayor pocketed the excess bid price, simply because he did not give the proceeds to complainant is unfounded. Complainant did not present evidence in connection with this claim. Mere suspicion without anything more cannot sway judgment.

Significantly, this is not the first time that we administratively dealt with Sheriff Montemayor. In *Proserfina Nogaliza v. Ricardo Montemayor, Jr.,*[55] we held Sheriff Montemayor liable for conduct prejudicial to the best interest of the service where he was meted the penalty equivalent to a fine of one (1) month salary.

Grave misconduct is a grave offense punishable by dismissal on first offense under Section 46 (A) (3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service. Conduct prejudicial to the best interest of the service is likewise a grave offense which carries the penalty of suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal

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[53] Section 6, Canon IV, Code of Conduct for Court Personnel.

[54] *Cañada v. Suerte*, A.M. No. RTJ-04-1884, February 22, 2008, 546 SCRA 414, 424 citing *Re: (1) Lost Checks Issued to the Late Roderick Roy P. Melliza, Former Clerk II, MCTC, Zaragga, Iloilo and (2) Dropping from the Rolls of Ms. Esther T. Andres,* A.M. No. 2005-26-SC, November 22, 2006, 507 SCRA 478, 497 also citing *Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court,* A.M. Nos. 2001-7-SC & 2001-8-SC, July 22, 2005, 464 SCRA 1.

[55] Resolution, A.M. No. P-09-2719, November 23, 2009.

on the second offense.[56] Hence, for Sheriff Montemayor's successive commission of serious offenses, the appropriate penalty is dismissal from service.[57]

There being no mitigating circumstance to temper Sheriff Montemayor's liability and more importantly, to impress upon court personnel the need to be competent and prudent in their dealings with litigants, we resolve to impose this penalty. In fine, we cannot afford leniency to repeat offenders for to do so would give the public the impression that we tolerate incompetence in the Judiciary.[58]

WHEREFORE, we find Sheriff Ricardo V. Montemayor, Jr. guilty of **GRAVE MISCONDUCT** and order his **DISMISSAL** from the service with forfeiture of all retirement benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations. We also **DIRECT** the Legal Office of the Office of the Court Administrator to file the appropriate criminal charges against him.

SO ORDERED.

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

Velasco, Jr., J. no part, inhibits due to relation to a party.

Brion, J., on leave.

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[56] Section 46 (B) (8), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

[57] See *Beltran v. Monteroso*, A.M. No. P-06-2237, December 4, 2008, 573 SCRA 1.

[58] *Olivan v. Rubio*, A.M. No. P-12-3063, November 26, 2013, 710 SCRA 590, 606 citing *Marcos v. Pamintuan*, A.M. No. RTJ-07-2062, January 18, 2011, 639 SCRA 658, 669.

EN BANC

[G.R. No. 158464. August 2, 2016]

JOCELYN S. LIMKAICHONG, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES, DEPARTMENT OF AGRARIAN REFORM, REPRESENTED BY THE SECRETARY OF AGRARIAN REFORM, THROUGH THE PROVINCIAL AGRARIAN REFORM OFFICER,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES.—** [T]he following requisites must concur for *certiorari* to prosper, namely: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law. *Without jurisdiction* means that the court acted with absolute lack of authority. There is *excess of jurisdiction* when the court transcends its power or acts without any statutory authority. *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.

2. **ID.; ID.; ID.; ID.; THE AVAILABILITY OF AN APPEAL BARS THE FILING OF A PETITION FOR *CERTIORARI* ONLY WHEN SUCH APPEAL IS IN ITSELF A SUFFICIENT AND ADEQUATE REMEDY.—** [T]he Court has held that the availability of an appeal as a remedy is a bar to the bringing of the petition for *certiorari* only where such appeal is in itself a sufficient and adequate remedy, in that it will promptly relieve the petitioner from the injurious effects of the judgment or final order complained of. The Court does

not hesitate or halt on its tracks in granting the writ of *certiorari* to prevent irreparable damage and injury to a party in cases where the trial judge capriciously and whimsically exercised his judgment, or where there may be a failure of justice; or where the assailed order is a patent nullity; or where the grant of the writ of *certiorari* will arrest future litigations; or for certain considerations, such as public welfare and public policy.

3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); JUST COMPENSATION; HOW DETERMINED.— Section 9, Article III of the 1987 Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." The determination of just compensation has been the subject of various discordant rulings of the Court. Although some of the later rulings have supposedly settled the controversy of whether the courts or the DAR should have the final say on just compensation, the conflict has continued, and has caused some confusion to the Bench and the Bar, as well as to the other stakeholders in the expropriation of agricultural landholdings. Under existing law and regulation, respondent LBP is tasked with the responsibility of initially determining the value of lands placed under land reform and the just compensation to be paid the landowners for their taking. By way of notice sent to the landowner pursuant to Section 16(a) of R.A. No. 6657, the DAR makes an offer to acquire the land sought to be placed under agrarian reform. If the concerned landowner rejects the offer, a summary administrative proceeding is held, and thereafter the provincial adjudicator (PARAD), the regional adjudicator (RARAD) or the central adjudicator (DARAB), as the case may be, fixes the price to be paid for the land, based on the various factors and criteria as determined by law or regulation. Should the landowner disagree with the valuation, he/she may bring the matter to the RTC acting as the SAC. This is the procedure for the determination of just compensation under R.A. No. 6657.

4. POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; THE DETERMINATION THEREOF IS A JUDICIAL FUNCTION; THE RULING THAT THE PARTIES ONLY HAVE FIFTEEN DAYS FROM THE RECEIPT OF THE DECISION OF THE DEPARTMENT OF AGRARIAN

REFORM WITHIN WHICH TO INVOKE THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE SPECIAL AGRARIAN COURT SHOULD BE PROSPECTIVELY APPLIED.— [T]he determination of just compensation in eminent domain is a judicial function. However, the more recent jurisprudence uphold the preeminence of the pronouncement in *Philippine Veterans Bank* to the effect that the parties only have 15 days from their receipt of the decision/order of the DAR within which to invoke the original and exclusive jurisdiction of the SAC; otherwise, the decision/order attains finality and immutability. It remains uncontested that the petitioner filed her complaint in the RTC for the determination of just compensation after more than two and a half months had already elapsed from the time the DARAB issued the assailed valuation. Following the pronouncement in *Philippine Veterans Bank,* her failure to file the complaint within the prescribed 15-day period from notice would have surely rendered the DARAB's valuation order final and executory. As such, it would seem that there was sufficient ground for the dismissal of the petitioner's complaint for having been filed out of time. However, we cannot fairly and properly hold that the petitioner's complaint for the determination of just compensation should be barred from being tried and decided on that basis. The prevailing rule at the time she filed her complaint on August 19, 1999 was that enunciated in *Republic v. Court of Appeals* on October 30, 1996. The pronouncement in *Philippine Veterans Bank* was promulgated on January 18, 2000 when the trial was already in progress in the RTC. At any rate, it would only be eight years afterwards that the Court *en banc* unanimously resolved the jurisprudential conundrum through its declaration in *Land Bank v. Martinez* that the better rule was that enunciated in *Philippine Veterans Bank*. The Court must, therefore, prospectively apply *Philippine Veterans Bank*. The effect is that the petitioner's cause of action for the proper valuation of her expropriated property should be allowed to proceed. Hence, her complaint to recover just compensation was properly brought in the RTC as the SAC, whose dismissal of it upon the motion of Land Bank should be undone.

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

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION, DEFINED;

THE DETERMINATION OF JUST COMPENSATION IS ESSENTIALLY A JUDICIAL FUNCTION.— The payment of just compensation is a constitutional limitation to the government's exercise of eminent domain. Despite making numerous appearances in various provisions of the fundamental law, it was the understanding among the members of the Constitutional Commission that the concept of "just compensation" would nevertheless bear the same jurisprudentially-settled meaning throughout the document. As settled, the term "just compensation" refers to the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample. The determination of just compensation is essentially a judicial function, consistent with the Court's roles as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses, and as the final arbiter over transgressions committed against constitutional rights. x x x [T]he concept of just compensation is uniform across all forms of exercise of eminent domain. There is then neither rhyme nor reason to treat agrarian reform cases differently insofar as the determination of just compensation is concerned. I therefore express my concurrence to the line of cases that ruled that the land valuation by DAR is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party, for, in the end, the courts still have the right to review with finality the determination in the exercise of what is admittedly a judicial function.

2. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); SPECIAL AGRARIAN COURTS; HAVE ORIGINAL AND EXCLUSIVE JURISDICTION TO SETTLE THE ISSUE OF JUST COMPENSATION TO LANDOWNERS.— Congress bestowed on the SACs "original and exclusive jurisdiction" over petitions for the determination of just compensation relating to government-taking of properties under the CARL. This could not be any clearer from the language of Sec. 57 of the law x x x. The fundamental tenet is that jurisdiction can only be granted

through legislative enactments, and once conferred cannot be diminished by the executive branch. It can neither be expanded nor restricted by executive issuances in the guise of law enforcement. Thus, although the DAR has the authority to promulgate its own rules of procedure, it cannot modify the "original and exclusive jurisdiction" to settle the issue of just compensation accorded the SACs. Stated in the alternative, the DAR is precluded from vesting upon itself the power to determine the amount of just compensation to which a landowner is entitled. x x x [T]he CARL contemplates of only two modes of fixing the proper amount of just compensation: either by agreement of the parties, or by court ruling. Should the parties then fail to agree, the only remaining option is to seek court intervention. Notably, the law does not leave to any other body, not even the DAR, the final determination of just compensation. The jurisdiction of the SAC on this matter, therefore, remains to be original and exclusive. This is consistent with the oft-cited ruling that the taking of property under RA 6657 is an exercise of the power of eminent domain by the State, and that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.

3. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT; RESERVED ONLY TO THOSE RENDERED BY JUDICIAL OR QUASI-JUDICIAL BODIES IN THE VALID EXERCISE OF THEIR JURISDICTION.—** The DAR's valuation, being preliminary in nature, could not attain finality, as it is only the courts that can resolve the issue on just compensation. Administrative rules that impose a reglementary period for filing a petition before the SAC, consequently allowing the DAR's preliminary valuation to attain finality, unduly diminish the original and exclusive jurisdiction of the SAC, and convert it into an appellate one. To clarify, the doctrine of "finality of judgment" is reserved only to those rendered by judicial or quasi-judicial bodies in the valid exercise of their jurisdiction. Dispositions of judicial and quasi-judicial bodies on matters within their jurisdiction or competence to decide are valid and binding. On the other hand, a judgment issued without jurisdiction is no judgment at all and cannot attain finality no matter how long a period has elapsed. The imposition of the 15-day reglementary period ought

to then be construed as a claim of jurisdiction. By decreeing that its valuation is capable of attaining finality, the DAR effectively arrogated unto itself the power to make a final determination, a binding judgment, on the amount of just compensation the landowner is entitled to, a power expressly bestowed exclusively upon the courts under Secs. 18 and 57 of the CARL. Consequently, it rendered the proceedings before the SACs appellate in nature, rather than originally commenced thereon. Moreover, it contravened the Court's doctrine in the landmark case of *Dulay* wherein we held that the judicial branch can never be barred from resolving the issue of just compensation.

4. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); JUST COMPENSATION; THE 15-DAY REGLEMENTARY PERIOD WITHIN WHICH TO FILE THE PETITION FOR THE DETERMINATION THEREOF LACKS STATUTORY BASIS AND DIMINISHES THE JURISDICTION VESTED ON THE SPECIAL AGRARIAN COURTS.— [T]here is no basis for requiring the petition for the determination of just compensation to be filed within 15 days from receipt of notice of the DAR's valuation. The validity of Sec. 11, Rule XIII of the 1994 Rules, as reincarnated in Sec. 6, Rule XIX of the 2009 Rules, cannot then be sustained and, instead, must be struck down as void and of no legal effect. Aside from lacking statutory basis, the imposition of the 15-day reglementary period likewise unduly diminishes the jurisdiction vested on the SACs x x x. [T]he duty to fix just compensation is a judicial function, and the jurisdiction of the SACs to set the appropriate value for it is original and exclusive. This is the clear import of Sec. 57 of the CARL. These cardinal doctrines, however, are violated by the imposition of a 15-day reglementary period under Sec. 11, Rule XIII of the 1994 Rules of Procedure and Sec. 6, Rule XIX of the 2009 Rules of Procedure. These rules supplement the perceived silence of the CARL with a provision that contradicts Sec. 57 thereof— vesting the DAR with the authority to render a binding judgment on the valuation of the subject property, and converting the original action before the SAC into an appellate one. It is settled jurisprudence that a rule or regulation cannot offend or collide with a legal provision. In cases of conflict between the law and the rules and regulations

implementing the same, the law must always prevail. x x x The spring cannot rise higher than its source. And just as a statute cannot be at variance with the Constitution, so too must the implementing rules conform to the language of the law. Rules and regulations cannot go beyond the terms and provisions of the basic law they seek to implement. The power to promulgate Rules and Regulations cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. Such being the case, Sec. 11, Rule XIII of the 1994 Rules of Procedure and Sec. 6, Rule XIX of the 2009 Rules of Procedure are null and void and of no legal effect. There is no period expressly nor impliedly prescribed by RA 6657 within which landowners may bring an action with the SAC for the determination of the just value of their lots.

LEONEN, *J.*, *separate concurring opinion*:

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); SPECIAL AGRARIAN COURTS; THE REGIONAL TRIAL COURTS SITTING AS SPECIAL AGRARIAN COURTS HAVE ORIGINAL AND EXCLUSIVE JURISDICTION OVER ALL PETITIONS FOR THE DETERMINATION OF JUST COMPENSATION TO LANDOWNERS AND SUCH JURISDICTION SHOULD NOT BE SUPERSEDED BY AN EXECUTIVE DETERMINATION.— The original and exclusive jurisdiction of Special Agrarian Courts to determine just compensation should not be superseded by an executive determination. Therefore, provisions that limit the period when landowners can assert their right to just compensation should be struck down for being outside the constitutional confines of the eminent domain powers of the state. The ponencia correctly upheld the doctrine in *Export Processing Zone Authority v. Dulay*. The valuation of the Department of Agrarian Reform is merely preliminary. It is even superfluous since the determination of just compensation is a settled role of the judiciary. Nevertheless, Section 16 of Republic Act No. 6657 allows the Department of Agrarian Reform to conduct a summary administrative proceeding to determine just compensation. The most relevant portion of this procedure is paragraph (f), which

states that "[a]ny party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation." x x x Regional Trial Courts sitting as Special Agrarian Courts have "***original and exclusive jurisdiction*** over all petitions for the determination of just compensation to landowners." The jurisdiction is *original,* which means that petitions for determination of just compensation may be initiated before Special Agrarian Courts. The jurisdiction is *exclusive*, which means that no other court or quasi-administrative tribunal has the same original jurisdiction over these cases. There are no ambiguities in Section 57 [of Republic Act No. 6657]. No administrative process can subvert this grant of original and exclusive jurisdiction to Special Agrarian Courts.

2. **POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; RIGHT TO JUST COMPENSATION; AS A CONSTITUTIONALLY ENSHRINED RIGHT, THE DETERMINATION OF JUST COMPENSATION IS ULTIMATELY A JUDICIAL MATTER.—** The right to just compensation is constitutionally enshrined. Article III, Section 9 of the Constitution states that "[p]rivate property shall not be taken for public use without just compensation." Article XIII, Section 4 of the Constitution also recognizes the landowner's right to just compensation. As a constitutional right, the determination of just compensation is ultimately a judicial matter. x x x Section 57 [of Republic Act No. 6657], which vests in the courts original and exclusive jurisdiction to determine just compensation, is consistent with the Constitution.

3. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); AGRARIAN DISPUTE; DOES NOT INCLUDE CONFLICTS BETWEEN LANDOWNERS AND THE GOVERNMENT IN INSTANCES OF EXPROPRIATION OR ENCOMPASS ANY CONTROVERSY RELATING TO JUST COMPENSATION THAT MUST BE PAID BY THE GOVERNMENT UPON TAKING OF LAND FROM A LANDOWNER.—** Although Section 54 of Republic Act No. 6657 states that "[a]ny decision, order, award or ruling of the D[epartment] [of] A[grarian] R[eform] on any agrarian dispute or on any matter pertaining to the application, implementation,

enforcement, or interpretation of this Act . . . may be brought to the Court of Appeals by certiorari," this must be read in relation to Section 57. Section 54 generally covers all decisions, orders, awards, or rulings of the Department of Agrarian Reform. On the other hand, Section 57 is a more specific provision that expressly vests special jurisdiction over the determination of just compensation in Special Agrarian Courts. x x x An agrarian dispute generally refers to conflicts between farmers, or between farmers and their landlords. The conflict between landowners and government, in instances of expropriation, is not included. Although "any controversy relating to compensation of lands acquired under this Act" is an agrarian dispute under Section 3, paragraph 2 of Republic Act No. 6657, this cannot encompass just compensation for a landowner. This contemplation would be in direct conflict with the unambiguous text of Section 57, as well as the constitutional right to just compensation. Moreover, there are two (2) types of compensation that may take place under agrarian reform. The first is the just compensation that must be paid by government upon condemnation, or the taking of land from a landowner. The second is the compensation that may be paid by farmer-beneficiaries who acquire ownership over land through a certificate of land ownership award. Thus, compensation under Section 3 refers only to the second type of compensation.

4. ID.; ID.; ID.; JUST COMPENSATION; A SPECIAL AGRARIAN COURT IS NOT TASKED WITH REVIEWING THE EXECUTIVE'S DETERMINATION OF JUST COMPENSATION BECAUSE ITS ORIGINAL JURISDICTION MEANS THAT IT IS NOT EXERCISING ITS APPELLATE JURISDICTION.— The original jurisdiction of the Special Agrarian Court means that it is not exercising its appellate jurisdiction; hence, it is not tasked with reviewing the executive's determination of just compensation. The Department of Agrarian Reform's determination is, at best, recommendatory to the courts. The courts have the discretion of disregarding the recommendation of the Department of Agrarian Reform. Nothing in the Constitution mandates the judiciary to follow recommendations coming from the executive.

5. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; AN ACTION TO RECOVER JUST COMPENSATION OVER

EXPROPRIATED LAND CONSTITUTES A REAL ACTION OVER AN IMMOVABLE WHICH PRESCRIBES IN THIRTY YEARS.— Section 57 [of Republic Act No. 6657] does not provide a time period for a landowner to file a petition for the determination of just compensation, even in the context of agrarian reform. Ordinary rules on prescription should apply. An action to recover just compensation over expropriated land constitutes a real action over an immovable. Under Article 1141 of the Civil Code, this kind of action prescribes after 30 years.

6. **REMEDIAL LAW; RULES OF PROCEDURE; SHOULD BE RELAXED IN CASES THAT INVOLVE FUNDAMENTAL RIGHTS.—** [T]he Court of Appeals erred in affirming the dismissal of Civil Case No. 12558 solely on the ground that petitioner chose the wrong remedy. This Court has repeatedly ruled against the dismissal of appeals based purely on strict application of technicalities. Instead of summarily dismissing the case, the Court of Appeals should have treated the Petition for Certiorari as an appeal filed under Rule 41 of the Rules of Court; it should have endeavored to resolve the case on its merits x x x. In cases that involve fundamental rights, such as this, the Court of Appeals should observe a reasonable relaxation of the rules of procedure.

JARDELEZA, *J.*, *separate concurring opinion*:

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL POWER; THE DETERMINATION OF JUST COMPENSATION IN CASES OF EMINENT DOMAIN IS AN ACTUAL CONTROVERSY THAT CALLS FOR THE EXERCISE OF JUDICIAL POWER BY THE COURT.—** Article VIII, Section 1 of the 1987 Constitution provides that "(j)udicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable." The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution. Thus, the determination of just compensation in cases of eminent domain is an actual controversy that calls for the exercise of judicial power by the courts. This is what the Court means when it said that "[t]he determination of 'just compensation' in eminent domain cases is a judicial function."

There is, however, no constitutional provision, policy, principle, value or jurisprudence that places the determination of *any* justiciable controversy beyond the reach of Congress' constitutional power and prerogative to require, through a grant of primary jurisdiction, that *a* controversy be first referred to an expert administrative agency for adjudication, subject to subsequent judicial review. The authority of Congress to create administrative agencies and grant them preliminary jurisdiction flows not only from the exercise of its plenary legislative power but also from its constitutional power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court.

2. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988); DEPARTMENT OF AGRARIAN REFORM; VESTED WITH PRIMARY JURISDICTION TO DETERMINE JUST COMPENSATION, SUBJECT TO FINAL REVIEW BY THE COURTS.—** On June 10, 1988, Congress enacted Republic Act No. 6657 (RA 6657) to implement a comprehensive agrarian reform program. In sharp contrast to Presidential Decree No. 27 (PD 27), which covered only rice and corn lands, RA 6657 sought to cover *all* private and public agricultural lands. It is the Government's most ambitious land reform program ever, subjecting an estimated 7.8 million hectares of land for acquisition and redistribution to landless farmer and farmworker beneficiaries. With a project of such scale, the Congress decided to, among others, vest the DAR with primary jurisdiction to determine just compensation, subject, to final review by the courts. x x x In case a party disagrees with the DAR's decision on the amount of compensation, Section 16 and related provisions allow him to bring the matter to the courts for final determination x x x. Appeals from SAC decisions may thereafter be taken to the Court of Appeals (and later the Supreme Court) via a petition for review.

3. **ID.; ID.; ID.; SPECIAL AGRARIAN COURTS; EMPOWERED TO CONDUCT A *DE NOVO* REVIEW OF THE DEPARTMENT OF AGRARIAN REFORM'S PRELIMINARY DETERMINATION OF JUST COMPENSATION IN CASE OF A PROPER CHALLENGE.—** Congress in RA 6657 provided for a *heightened* judicial review of the DAR's preliminary

determination of just compensation pursuant to Section 16. In case of a proper challenge, SACs are actually empowered to conduct a *de novo* review of the DAR's decision. Under RA 6657, a full trial is held where SACs are authorized to (1) appoint one or more commissioners, (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of fact anew. In other words, in exercising its **exclusive and original jurisdiction** to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of a Regional Trial Court (RTC) under Rule 67 of the Revised Rules of Court. In such manner, the SAC thus conducts a more *exacting* type of review, compared to the procedure provided either under Rule 43 of the Revised Rules of Court, which governs appeals from decisions of administrative agencies to the Court of Appeals, or under Book VII, Chapter 4, Section 25 of the Administrative Code of 1987, which provides for a default administrative review process. In both cases, the reviewing court decides based on the record, and the agency's findings of fact are held to be binding when supported by substantial evidence. The SAC, in contrast, retries the whole case, receives new evidence, and holds a full evidentiary hearing.

4. ID.; ID.; ID.; JUST COMPENSATION; THE ADJUDICATION BY THE DEPARTMENT OF AGRARIAN REFORM ON JUST COMPENSATION BECOMES FINAL AND IMMUTABLE IF NOT TIMELY CHALLENGED BEFORE THE SPECIAL AGRARIAN COURT.— We read *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines* differently. It held that the determination by DAR of the amount of just compensation becomes final if not elevated "on time" to SAC x x x. Neither landowner nor agency can disregard the administrative process provided under RA 6657 without offending the constitutional prerogative of the Congress to grant primary jurisdiction to the DAR. x x x The adjudication by the DAR on just compensation is not an executive recommendation or a superfluity to be blithely dismissed by the courts. They are, rather, quasi-judicial decisions reached as a result of what the Administrative Code of 1987 considers as a contested case, where "legal rights, duties or privileges asserted by specific parties as required by the Constitution or by law are x x x determined after hearing." These decisions become final and immutable if not timely challenged before the SAC. The SAC, in resolving such challenge, must dispose, affirm or reverse

the administrative agency's determination by way of a full decision, expressing "clearly and distinctly the facts and the law" on which the SAC decision is based.

5. ID.; ID.; ID.; DEPARTMENT OF AGRARIAN REFORM (DAR); THE DECISION OF THE DAR ON THE DETERMINATION OF JUST COMPENSATION BECOMES FINAL WITHIN FIFTEEN DAYS FROM RECEIPT OF THE DECISION UNLESS BROUGHT TO THE SPECIAL AGRARIAN COURT.— The requirement for a fifteen-day period to file with the SAC is expressly provided for in RA 6657 and its validity foreclosed by our ruling in *Martinez.* x x x The fifteen-day period is provided for in Sections 51 and 54, in relation to Section 57, of RA 6657 x x x. While Section 51 expressly provides for the fifteen-day period, Section 54 states that any decision of the DAR on any agrarian dispute or matter pertaining to the implementation of the Act (including, perforce, determination of just compensation) may be brought to the Court of Appeals within fifteen (15) days from receipt of a copy of the DAR decision, "except as otherwise provided in the Act." The proviso refers to the exception provided under Section 57, namely, the special jurisdiction of the SAC to determine just compensation. On top of Section 51, Sections 54 and 57, read together, provide that decisions of the DAR become final within fifteen (15) days from receipt of the decision, unless brought to the Court of Appeals under Section 54, or to the SAC under Section 57.

6. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; DEPARTMENT OF AGRARIAN REFORM; HAS THE POWER TO ISSUE RULES, REGULATIONS AND RULES OF PROCEDURE TO ACHIEVE A JUST, EXPEDITIOUS AND INEXPENSIVE DETERMINATION OF EVERY PROCEEDING BEFORE IT; THE DECISIONS OF ADMINISTRATIVE AGENCIES BECOME FINAL FIFTEEN DAYS FROM RECEIPT OF THE AGENCY ORDER.— Even assuming arguendo Justice Velasco is correct in stating that RA 6657 does not provide for the fifteen-day period, the constitutional and statutory authority of the DAR to promulgate its own rules of procedure is not in issue in this case. Neither is the validity of the DARAB Rules of Procedure. The DARAB Rules of Procedure were promulgated under

authority of Sections 49 and 50 of RA 6657, which grant the DAR the power to "issue rules and regulations, whether substantive or procedural, to carry out" RA 6657 and "adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination for every action or proceeding before it." This Court, in *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Authority*, has recognized the power of administrative bodies to "fill in the details" to implement the policies laid down in a statute through supplementary regulation. More, the Administrative Code of 1987 which provides for, among others, a default uniform procedure for the judicial review of decisions of administrative agencies, also provides that decisions of administrative agencies become final after fifteen (15) days from receipt of the agency order. x x x The Revised Rules of Court finally also provide, under Rule 43, Section 4, for a fifteen-day period of finality for agency action.

7. CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; PRESCRIPTION OF ACTIONS; THIRTY-YEAR PRESCRIPTIVE PERIOD OVER REAL ACTIONS; THE APPLICATION THEREOF AS THE TIME LIMIT TO BRING THE DECISION OF THE DEPARTMENT OF AGRARIAN REFORM ON JUST COMPENSATION TO THE SPECIAL AGRARIAN COURT VIOLATES THE RIGHT TO SPEEDY DISPOSITION OF CASES AND ERODES THE JUSTNESS OF THE JUST COMPENSATION, FOR JUST COMPENSATION REQUIRES THAT THE PAYMENT BE MADE CLOSEST TO THE TAKING.— Justice Leonen suggests that the applicable time limit to bring the DAR decision to the SAC is the thirty (30) year prescriptive period over real actions provided under the Civil Code. I disagree. A thirty-year period is unreasonable. It is oppressive to the landowner, to the DAR and the Land Bank of the Philippines (LBP) because it violates the Constitution's command that "[a]ll persons shall have the right to a *speedy* disposition of their cases before all judicial, quasi-judicial, or administrative bodies." It also defeats the primordial objective of the Revised Rules of Court "of securing a just, *speedy* and inexpensive disposition of every action and proceeding." A thirty-year period will also impermissibly erode the "justness" of the just compensation inasmuch as just compensation requires that the payment be made **closest to** the

taking x x x. Finally, the constitutional guarantee of equal protection of the laws demands that a thirty-year period should be available to both the landowner and the DAR/LBP. Under this regime, landowners would be tempted to speculate on receiving interest if they postpone the filing of the action to determine just compensation, thus, shifting the burden of the risk of inflation to the Government. This, in turn, will disturb the Government's budget process and consequently increase the cost to be incurred by the Government in implementing land reform. Conversely, unscrupulous DAR/LBP functionaries may be tempted to unduly delay appeal for corrupt reasons. This will leave a landowner uncertain, for the duration of the thirty-year period, as to the true value of his property, the very evil he is sought to be protected from by *Martinez* x x x.

APPEARANCES OF COUNSEL

Yap-Siton Law Offices for petitioner.
Gonzales Beramo & Associates for respondent LBP.

D E C I S I O N

BERSAMIN, *J.*:

Being now assailed in this appealare the decision promulgated by the Court of Appeals (CA) on November 22, 2002 (dismissing the petitioner's petition for *certiorari* for not being the proper remedy, thereby affirming the dismissal of Civil Case No. 12558 by the trial court on the ground of the valuation by the Department of Agrarian Reform (DAR) having already become final due to her failure as the landowner to bring her action for judicial determination of just compensation within 15 days from notice of such valuation),[1] and the resolution promulgated on June 2, 2003 (denying her motion for reconsideration).[2]

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[1] *Rollo*, pp. 165-169; penned by Associate Justice Perlita J. Tria Tirona (retired), with the concurrence of Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[2] *Id*. at 189-190.

Antecedents

The petitioner was the registered owner of agricultural lands with a total area of 19.6843 hectares situated in Villegas, Guihulngan, Negros Oriental and covered by Original Certificate of Title No. (OCT) FV-34400, OCT No. 34401, OCT No. 34402, and OCT No. 34403, all of the Register of Deeds of Negros Oriental. For purposes of placing those lands within the coverage of Republic Act No. 6657 (R.A. No. 6657),[3] the Department of Agrarian Reform Adjudication Board (DARAB), Office of the Provincial Adjudicator, in Dumaguete City sent to her in 1998 several Notices of Land Valuation and Acquisition by which her lands were valued for acquisition by the DAR as follows:

1. OCT FV-34400– ₱177,074.93;[4]
2. OCT FV-34401– ₱171,061.11;[5]
3. OCT FV-34402– ₱167,626.62;[6] and
4. OCT FV-34403– ₱140,611.65.[7]

After the petitioner rejected such valuation of her lands, the DARAB conducted summary administrative proceedings for the determination of just compensation.[8] On May 28, 1999, the DARAB issued its order affirming the valuation of the lands upon finding the valuation consistent with existing administrative guidelines on land valuation.[9]

On August 19, 1999, the petitioner filed in the Regional Trial Court (RTC) in Dumaguete City a complaint for the fixing of

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[3] *Comprehensive Agrarian Reform Law*, signed by President Corazon Aquino on June 10, 1988.

[4] *Rollo*, pp. 69-70.

[5] *Id*. at 71-72.

[6] *Id*. at 76.

[7] *Id*. at 73-74.

[8] Docketed as DARAB Case Nos. VII-203-NO-98, VII-204-NO-98, VII-213-NO-98, and VII-228-NO-98.

[9] *Rollo*, pp. 98-103.

just compensation for her lands,[10] impleading as defendant the Land Bank of the Philippines (LBP) and the DAR, represented by the DAR Secretary, through the Dumaguete Provincial Agrarian Reform Officer (PARO). Her complaint, docketed as Civil Case No. 12558, prayed that the DARAB valuation be set aside and declared null and void, and that in its stead the price of her lands be fixed based on the fair market value thereof.

After filing their answer, the respondents filed a manifestation and motion to dismiss,[11] stating that the petitioner's failure to timely appeal the May 28, 1999 DARAB order had rendered the order final and executory pursuant to Section 51[12] of R.A. No. 6657. They attached to the motion to dismiss a June 23, 2000 certification of finality issued by the Clerk of the DARAB,[13] stating that the May 28, 1999 order had become final and executory because there had been no appeal filed within the reglementary period provided by law.

In her opposition to the respondents' motion to dismiss,[14] the petitioner admitted that Civil Case No. 12558 was filed beyond the reglementary period, but insisted that the RTC sitting as special agrarian court (SAC) was not barred from acquiring jurisdiction over the complaint for determination of just compensation, because her cause of action was anchored on the respondents' violation of her right to due process and their taking of her property without just compensation due to the DARAB valuation being too low and having been arbitrarily

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[10] *Id.* at 82-85.

[11] *Id.* at 104-105.

[12] Section 51. Finality of Determination. - Any case or controversy before it (DAR) shall be decided within thirty (30) days after it is submitted for resolution. Only one (1) motion for consideration shall be allowed. Any order, ruling or decision shall be final after the lapse of fifteen (15) days from receipt of a copy thereof.

[13] *Rollo*, p. 106.

[14] *Id.* at 107-110.

arrived at. She claimed that the RTC as the SAC should accord her the same treatment it had accorded to other landowners who had been given the chance to be heard on their claim for re-valuation despite the belated filing of their complaints for just compensation.

On June 7, 2001, the RTC as the SAC granted the respondents' motion to dismiss.[15] Citing Section 51 and Section 54[16] of R.A. No. 6657 and Section 11 of Rule XIII of the 1994 DARAB Rules of Procedure,[17] it held that the petitioner's complaint should have been filed within 15 days from notice of the assailed order. It dismissed her argument that the case was anchored on violations of her constitutional rights to due process and just compensation, declaring that the controlling ruling was *Philippine Veterans Bank v. Court of Appeals*,[18] not *Republic v. Court of Appeals*.[19] Thus, applying the ruling in *Philippine Veterans Bank*, the RTC concluded that dismissal was proper because she had filed Civil Case No. 12558 beyond the statutory 15-day period.

The petitioner moved for reconsideration,[20] but to no avail.

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[15] *Id.* at 116-121.

[16] Section 54. *Certiorari*. — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by *certiorari* except as otherwise provided in this Act within fifteen (15) days from receipt of a copy thereof.

[17] Section 11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

[18] G.R. No. 132767, January 18, 2000, 322 SCRA 139.

[19] G.R. No. 122256, October 30, 1996, 263 SCRA 758.

[20] *Rollo,* pp. 122-135.

Thus, on October 22, 2001, the petitioner brought her petition for *certiorari* in the CA assailing the dismissal of Civil Case No. 12558.

On November 22, 2002, the CA rendered its decision affirming the dismissal of Civil Case No. 12558, opining that because the June 7, 2001 order of the RTC dismissing Civil Case No. 12558 was a final order, the petitioner's remedy was not the special civil action for *certiorari* but an appeal in the CA; that she chose the wrong remedy because *certiorari* could not take the place of an appeal; and that the RTC thus committed no grave abuse of discretion that warranted the issuance of the writ of *certiorari*.

Issue

The petitioner raises the following issue for resolution:

WHETHER OR NOT ON THE QUESTION OF CONSTITUTIONAL RIGHT TO EQUAL PROTECTION OF LAW, THE COURT OF APPEALS DECISION DATED NOVEMBER 22, 2002 RULING THAT THE PETITION FOR *CERTIORARI* WAS NOT THE PROPER REMEDY IS CONTRARY TO THE LAW AND JURISPRUDENCE AS APPLIED TO THE EVIDENCE ON RECORD.[21]

The petitioner argues that she is entitled to equal protection and treatment accorded by the very same trial court to other landowners whose landholdings were placed under agrarian reform coverage, listing the cases involving other landowners who had been given the chance to be heard on their claim for re-valuation by the trial court.[22] She justifies her resort to *certiorari* by claiming that the RTC, in dismissing Civil Case No. 12558, acted whimsically and arbitrarily, and gravely abused its discretion; and that *certiorari* was necessary to prevent irreparable damage and injury to her resulting from the acquisition by the State of her lands based on wrongful valuation and without paying her the proper and just compensation.

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[21] *Id*. at 18.

[22] *Id*. at 19-24, 138-155.

In their respective comments,[23] the respondents counter that the petitioner's reliance on the equal protection clause of the fundamental law is misplaced and bereft of legal and factual basis; that, on the contrary, they faithfully performed their task in relation to her landholdings, and in accordance with the agrarian laws and guidelines issued in furtherance thereof; that the final and executory DARAB valuation should no longer be disturbed by her frivolous claim of lack of due process; that her failure to properly observe the rules of procedure relative to reglementary periods should not be concealed by a trivial claim of violation of her constitutional rights; that pursuant to Section 60[24] of RA 6657, the decision became final because an appeal by petition for review was not taken from the decision of the RTC as the SAC within 15 days from notice of the decision; and that there was no proof of service on the CA of a copy of the petition as required by Section 3, Rule 45 of the *Rules of Court* and Circular No. 19-91, thereby warranting the outright dismissal of the petition.

Ruling of the Court

The petition for review is meritorious.

I

***Certiorari* was a proper remedy despite the availability of appeal**

The CA ruled that the proper remedy of the petitioner was not to bring the petition for *certiorari* but to appeal the dismissal

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[23] *Id*. at 215-228, 232-250.

[24] Section 60. Appeals.- An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals fifteen (15) days from receipt of notice of the decision; otherwise, the decision shall become final.

An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of DAR, as the case may be, shall be by a petition for review with the Supreme Court within a non-extendible period of fifteen (15) days from receipt of a copy of said decision.

of Civil Case No. 12558 in accordance with the *Rules of Court*; and that appeal as her proper remedy was already time-barred.

Ostensibly, the assailed dismissal by the RTC was an order that had finally disposed of Civil Case No. 12558; hence, the petitioner's proper recourse therefrom was an appeal taken in due course because the order of dismissal was a final disposition of the case.[25] In that situation, *certiorari* would not have been appropriate.

However, the petitioner would not be prevented from assailing the dismissal by petition for *certiorari* provided her resort complied with the requirements of the *Rules of Court* for the bringing of the petition for *certiorari*. In that regard, the following requisites must concur for *certiorari* to prosper, namely: (1) the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[26] *Without jurisdiction* means that the court acted with absolute lack of authority. There is *excess of jurisdiction* when the court transcends its power or acts without any statutory authority. *Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law. [27]

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[25] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Lopez,* G.R. No. 159941, August 17, 2011, 655 SCRA 580, 590-591.

[26] *De los Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700.

[27] *Id*.

Indeed, the Court has held that the availability of an appeal as a remedy is a bar to the bringing of the petition for *certiorari* only where such appeal is in itself a sufficient and adequate remedy, in that it will promptly relieve the petitioner from the injurious effects of the judgment or final order complained of.[28] The Court does not hesitate or halt on its tracks in granting the writ of c*ertiorari* to prevent irreparable damage and injury to a party in cases where the trial judge capriciously and whimsically exercised his judgment, or where there may be a failure of justice;[29] or where the assailed order is a patent nullity; or where the grant of the writ of certiorari will arrest future litigations; or for certain considerations, such as public welfare and public policy.[30]

Here, the petitioner laments that she had not been accorded equal protection and treatment by the trial court which had awarded to other landowners a higher valuation of their property despite the belated filing of their petitions. For sure, the petition for *certiorari* thereby plainly alleged that the RTC had committed grave abuse of discretion by violating the petitioner's constitutional right to due process or equal protection. Such a petition should not be forthwith dismissed but should be fully heard if only to ascertain and determine if the very serious allegations were true.

II

Dismissal of petitioner's action was unfair and improper

Section 9, Article III of the 1987 Constitution provides that "[p]rivate property shall not be taken for public use without just compensation." The determination of just compensation

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[28] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, 358; *Silvestre v. Torres and Oben*, 57 Phil. 885, 890 (1933).

[29] *Rodriguez v. Court of Appeals*, G.R. No. 85723, June 19, 1995, 245 SCRA 150, 152.

[30] *Bristol Myers Squibb, (Phils.), Inc. v. Viloria*, G.R. No. 148156, September 27, 2004, 439 SCRA 202, 211.

has been the subject of various discordant rulings of the Court. Although some of the later rulings have supposedly settled the controversy of whether the courts or the DAR should have the final say on just compensation, the conflict has continued, and has caused some confusion to the Bench and the Bar, as well as to the other stakeholders in the expropriation of agricultural landholdings.

Under existing law and regulation, respondent LBP is tasked with the responsibility of initially determining the value of lands placed under land reform and the just compensation to be paid the landowners for their taking.[31] By way of notice sent to the landowner pursuant to Section 16(a)[32] of R.A. No. 6657, the DAR makes an offer to acquire the land sought to be placed under agrarian reform. If the concerned landowner rejects the offer, a summary administrative proceeding is held, and thereafter the provincial adjudicator (PARAD), the regional adjudicator (RARAD) or the central adjudicator (DARAB), as the case may be, fixes the price to be paid for the land, based on the various factors and criteria as determined by law or regulation. Should the landowner disagree with the valuation, he/she may bring

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[31] Executive Order No. 405 (VESTING IN THE LAND BANK OF THE PHILIPPINES THE PRIMARY RESPONSIBILITY TO DETERMINE THE LAND VALUATION AND COMPENSATION FOR ALL LANDS COVERED UNDER REPUBLIC ACT NO. 6657, KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988), dated June 14, 1990.

[32] Section 16. Procedure for Acquisitionand Distribution of Private Lands.- For purposes of acquisition of private lands, the following procedures shall be followed:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

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the matter to the RTC acting as the SAC.[33] This is the procedure for the determination of just compensation under R.A. No. 6657.[34]

There appears to be no question on the respondents' observance of the proper procedure for acquisition of the petitioner's lands. The remaining issue concerns whether the trial court's dismissal of her petition because of her failure to file it before the decision/order of the DARAB became final and executory pursuant to Section 51 of R.A. No. 6657 was fair and proper.

We rule in the negative.

There have been divergent rulings on whether the courts or another agency of the government could address the determination of just compensation in eminent domain, but the starting point is the landmark 1987 ruling in *Export Processing Zone Authority (EPZA) v. Dulay*,[35] which resolved the challenge against several decrees promulgated by President Marcos. The decrees provided certain measures to the effect that the just compensation for property under expropriation should be either the assessment of the property by the Government or the sworn valuation of the property by the owner, whichever was *lower*. In declaring the decrees unconstitutional, the Court cogently held:

> The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under this Constitution is reserved to it for final determination.
>
> Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply stating the lower value of the property as declared

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[33] Section 51 of R.A. No. 6657; Section 11 of Rule XIII of the 1994 DARAB Rules of Procedure.

[34] *Republic v. Court of Appeals*, *supra* note 19, at 764-765.

[35] G.R. No. 59603, April 29, 1987, 149 SCRA 305.

either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just and fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation is concerned.

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In the present petition, we are once again confronted with the same question of whether the courts under P.D. No. 1533, which contains the same provision on just compensation as its predecessor decrees, still have the power and authority to determine just compensation, independent of what is stated by the decree and to this effect, to appoint commissioners for such purpose.

This time we answer in the affirmative.

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It is violative of due process to deny the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to the basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.[36]

The Court has reiterated *EPZA v. Dulay* in its later decisions, stressing that such determination was the function of the courts of justice that no other branch or official of the Government could usurp.

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[36] *Id.* at 311-316.

Upon the effectivity of R.A. No. 6657 in 1988, the DAR, as the central implementing agency of the law, promulgated the DARAB Rules of Procedures in 1989, 1994, 2003, and 2009 pursuant to the provisions of Section 49[37] and Section 50[38] of R.A. No. 6657 vesting it with the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of the CARL. Moreover, Section 57 of

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[37] Section 49. Rules and Regulations. The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation.

[38] Section 50. Quasi-Judicial Powers of the DAR. The DAR is hereby vested with the primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR).

It shall not be bound by technical rules of procedure and evidence but shall proceed to hear and decide all cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity and the merits of the case. Toward this end, it shall adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination for every action or proceeding before it.

It shall have the power to summon witnesses, administer oaths, take testimony, require submission of reports, compel the production of books and documents and answers to interrogatories and issue subpoena, and *subpoena duces tecum* and to enforce its writs through sheriffs or other duly deputized officers. It shall likewise have the power to punish direct and indirect contempt in the same manner and subject to the same penalties as provided in the Rules of Court

Representatives of farmer leaders shall be allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR: *Provided, however,* that when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any DAR proceedings.

Notwithstanding an appeal to the Court of Appeals, the decision of the DAR shall be immediately executory except a decision or portion thereof involving solely the issue of just compensation.

the CARL defines the jurisdiction of the RTC sitting as the SAC, *viz.*:

> Section 57. *Special Jurisdiction* - The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Republic v. Court of Appeals,[39] which was principally relied upon by the petitioner herein, reiterated that the determination of just compensation for the taking of lands under the CARL was a power vested in the courts and not in administrative agencies, clarifying that the jurisdiction of the SAC was not appellate but original and exclusive, to wit:

> Apart from the fact that only a statute can confer jurisdiction on courts and administrative agencies — rules of procedure cannot — it is noteworthy that the New Rules of Procedure of the DARAB, which was adopted on May 30, 1994, now provide that in the event a landowner is not satisfied with a decision of an agrarian adjudicator, the landowner can bring the matter directly to the Regional Trial Court sitting as Special Agrarian Court. Thus Rule XIII, §11 of the new rules provides:
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> > §11. *Land Valuation and Preliminary Determination and Payment of Just Compensation*. - The decision of the Adjudicator on land valuation and preliminary determination and payment of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

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[39] *Supra* note 20.

This is an acknowledgment by the DARAB that the decision of just compensation cases for the taking of lands under R.A. No. 6657 is a power vested in the courts.

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x x x. In accordance with it, the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. In the terminology of §57, the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." It would subvert this "original and exclusive" jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.

Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from §57 that the *original* and *exclusive* jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to §57 and therefore would be void. What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.[40]

In the January 18, 2000 ruling in *Philippine Veterans Bank*,[41] the Court, through Justice Vicente V. Mendoza who had penned *Republic v. Court of Appeals*, upheld the DARAB rule to the effect that the adjudicator's preliminary determination of just compensation must be brought to the SAC within 15 days from receipt of the notice thereof; otherwise, the parties would be concluded by the result. The Court then declared:

As we held in *Republic v. Court of Appeals*, this rule is an acknowledgment by the DARAB that the power to decide just compensation cases for the taking of lands under R.A. No. 6657 is vested in the courts. It is error to think that, because of Rule XIII,

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[40] *Id.* at 764-765.

[41] *Supra* note 19.

§11, the original and exclusive jurisdiction given to the courts to decide petitions for determination of just compensation has thereby been transformed into an appellate jurisdiction. It only means that, in accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR as an administrative agency to determine in a preliminary manner the reasonable compensation to be paid for the lands taken under the Comprehensive Agrarian Reform Program, but such determination is subject to challenge in the courts.

The jurisdiction of the Regional Trial Courts is not any less "original and exclusive" because the question is first passed upon by the DAR, as the judicial proceedings are not a continuation of the administrative determination. For that matter, the law may provide that the decision of the DAR is final and unappealable. Nevertheless, resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.

Accordingly, as the petition in the Regional Trial Court was filed beyond the 15-day period provided in Rule XIII, §11 of the Rules of Procedure of the DARAB, the trial court correctly dismissed the case and the Court of Appeals correctly affirmed the order of dismissal.[42]

However, in the 2007 ruling in *Land Bank v. Suntay*,[43] the Court opined that the RTC erred in dismissing the Land Bank's petition for determination of just compensation on the ground that it was filed beyond the 15-day period provided in Section 11, Rule XIII of the DARAB New Rules of Procedure. This Court then emphatically reminded that the SAC's jurisdiction over petitions for the determination of just compensation was original and exclusive; that any effort to transfer such jurisdiction to the adjudicators of the DARAB and to convert the original jurisdiction of the RTC into appellate jurisdiction was void for being contrary to R.A. No. 6657; and that what DARAB adjudicators were empowered to do was only to determine *in a preliminary manner* the reasonable compensation to be paid to the landowners, leaving to the courts the ultimate power to decide this question.[44]

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[42] *Id.* at 145-147.

[43] G.R. No. 157903, October 11, 2007, 535 SCRA 605.

[44] *Id.* at 618-619.

To purge any uncertainties brought about by the conflicting jurisprudence on the matter, this Court held in its July 31, 2008 resolution in *Land Bank v. Martinez*:[45]

> On the supposedly conflicting pronouncements in the cited decisions, the Court reiterates its ruling in this case that **the *agrarian reform adjudicator's decision on land valuation attains finality after the lapse of the 15-day period stated in the DARAB Rules*. The petition for the fixing of just compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period**. This conclusion, as already explained in the assailed decision, is based on the doctrines laid down in *Philippine Veterans Bank v. Court of Appeals* and *Department of Agrarian Reform Adjudication Board v. Lubrica*.
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> x x x x x x x x x
>
> The Court notes that the *Suntay* ruling is based on *Republic of the Philippines v. Court of Appeals*, decided in 1996 also through the pen of Justice Vicente V. Mendoza. In that case, the Court emphasized that the jurisdiction of the SAC is original and exclusive, not appellate. *Republic*, however, was decided at a time when Rule XIII, Section 11 was not yet present in the DARAB Rules. Further, *Republic* did not discuss whether the petition filed therein for the fixing of just compensation was filed out of time or not. The Court merely decided the issue of whether cases involving just compensation should first be appealed to the DARAB before the landowner can resort to the SAC under Section 57 of R.A. No. 6657.
>
> To resolve the conflict in the rulings of the Court, we now declare herein, for the guidance of the bench and the bar, that the better rule is that stated in *Philippine Veterans Bank*, reiterated in *Lubrica* and in the August 14, 2007 Decision in this case. Thus, ***while a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality***. This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition before the SAC, *e.g.*, one filed a month, or a year,

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[45] G.R. No. 169008, July 31, 2008, 560 SCRA 776.

or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.[46] (Emphasis supplied)

In all of the foregoing rulings of the Court as well as in subsequent ones, it could not have been overemphasized that the determination of just compensation in eminent domain is a judicial function. However, the more recent jurisprudence uphold the preeminence of the pronouncement in *Philippine Veterans Bank* to the effect that the parties only have 15 days from their receipt of the decision/order of the DAR within which to invoke the original and exclusive jurisdiction of the SAC; otherwise, the decision/order attains finality and immutability.

It remains uncontested that the petitioner filed her complaint in the RTC for the determination of just compensation after more than two and a half months had already elapsed from the time the DARAB issued the assailed valuation. Following the pronouncement in *Philippine Veterans Banks*, her failure to file the complaint within the prescribed 15-day period from notice would have surely rendered the DARAB's valuation order final and executory. As such, it would seem that there was sufficient ground for the dismissal of the petitioner's complaint for having been filed out of time.

However, we cannot fairly and properly hold that the petitioner's complaint for the determination of just compensation should be barred from being tried and decided on that basis. The prevailing rule at the time she filed her complaint on August 19, 1999 was that enunciated in *Republic v. Court of Appeals* on October 30, 1996.[47] The pronouncement in *Philippine Veterans Bank* was promulgated on January 18, 2000 when the trial was already in progress in the RTC. At any rate, it would only be eight years afterwards that the Court *en banc* unanimously resolved the jurisprudential conundrum through its declaration

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[46] *Id*, at 781-783.

[47] *Supra* note 19.

in *Land Bank v. Martinez* that the better rule was that enunciated in *Philippine Veterans Bank*. The Court must, therefore, prospectively apply *Philippine Veterans Bank*. The effect is that the petitioner's cause of action for the proper valuation of her expropriated property should be allowed to proceed. Hence, her complaint to recover just compensation was properly brought in the RTC as the SAC, whose dismissal of it upon the motion of Land Bank should be undone.

WHEREFORE, we **GRANT** the petition for review on *certiorari,* and **REVERSE** the decision of the Court of Appeals dated November 22, 2002; and **DIRECT** the Regional Trial Court, Branch 30, in Dumaguete City to resume the proceedings in Civil Case No. 12558 for the determination of just compensation of petitioner Jocelyn S. Limkaichong's expropriated property.

No pronouncement on costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Peralta, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Carpio, J., joins the separate concurring opinion of *J. Velasco, Jr.*

Velasco, Jr., Leonen, and *Jardeleza, JJ.,* see separate concurring opinions.

Brion, J., on leave.

SEPARATE CONCURRING OPINION

VELASCO, JR., *J.*:

I concur with the well-crafted *ponencia* of my esteemed colleague, Associate Justice Lucas P. Bersamin.

While the grant of the petition is moored on the pronouncement in *Republic v. Court of Appeals (Republic)*,[1] as reinforced later in *Land Bank of the Philippines v. Suntay*,[2] I submit that the petition should be granted on the ground that the fifteen (15)-day period to file the case with the Special Agrarian Court (SAC) required by the 1994 DARAB Rules of Procedure (1994 DARAB Rules) and adopted in the 2009 version is null and void, it being a gross breach of Section 57 of Republic Act No. 6657 (RA 6657), otherwise known as the *Comprehensive Agrarian Reform Law* (CARL).

I am in complete agreement with the *ponencia*'s application herein of the doctrine in *Republic*, as reiterated in *Suntay*, to the end that there is no statutory period within which the issue of just compensation must be brought before the proper Regional Trial Court (RTC) acting as the SAC. But while the *ponencia* is of the position that the rulings in *Republic* and *Suntay* have already been superseded, I respectfully submit that the doctrine is as valid and applicable now as it were before.

The issue in the case at bar originated from the petition of Jocelyn S. Limkaichong (Limkaichong) for the determination of the amount of just compensation that she is entitled to under the CARL. Pursuant to Sec. 16 of the law, the Department of Agrarian Reform (DAR) "*shall conduct summary administrative proceedings to determine the compensation for the land*"[3] if the landowner rejects the initial offer of compensation from the government; and "*[a]ny party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation*."[4]

None of the parties doubts that the proper court in this case is the RTC in Dumaguete City designated as the SAC.

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[1] G.R. No. 122256, October 30, 1996.

[2] G.R. No. 157903, October 11, 2007.

[3] RA 6657, Sec. 16(d).

[4] *Id.*, Sec. 16(f).

Respondents postulate, however, that the judicial remedy is subject to a 15-day reglementary period reckoned from the date of receipt of the DAR's valuation, citing Sec. 54 of the CARL, as well as Sec. 11, Rule XIII of the 1994 DARAB Rules. The rule provides:

> Sec.11. *Land Valuation and Preliminary Determination and Payment of Just Compensation.* – The decision of the Adjudicator on land valuation and preliminary determination of just compensation shall not be appealable to the Board but shall be brought directly to the Regional Trial Courts designated as Special Agrarian Courts within fifteen (15) days from receipt of the notice thereof. Any party shall be entitled to only one motion for reconsideration.

Replicated in Sec. 6, Rule XIX of the 2009 DARAB Rules is the imposition of the 15-day reglementary period. The provision reads:

> Sec. 6. Filing of Original Action with the Special Agrarian Court for Final Determination. – The party who disagrees with the decision of the Board/Adjudicator may contest the same by filing an original action with the Special Agrarian Court (SAC) having jurisdiction over the subject property **within fifteen (15) days from his receipt** of the Board/Adjudicator's decision. (emphasis added)

Since it was not disputed herein, as it was in fact admitted, that petitioner Limkaichong availed of the judicial remedy after about two-and-a-half months had elapsed from receipt of notice, respondents claim that the SAC ought to have dismissed her petition outright.

Respondents' argument fails to persuade.

Discussion

The determination of just compensation is a judicial function

The payment of just compensation is a constitutional limitation to the government's exercise of eminent domain. Despite making numerous appearances in various provisions of the fundamental

law,[5] it was the understanding among the members of the Constitutional Commission that the concept of "just compensation" would nevertheless bear the same jurisprudentially-settled meaning throughout the document.[6]

As settled, the term "just compensation" refers to the full and fair equivalent of the property taken from its owner by the expropriator. The measure is not the taker's gain, but the owner's loss. The word "just" is used to qualify the meaning of the word "compensation" and to convey thereby the idea that the amount to be tendered for the property to be taken shall be real, substantial, full and ample.[7]

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[5] **Article III. Bill of Rights**

Section 9. Private property shall not be taken for public use without **just compensation.**

Article XII. National Economy and Patrimony

Section 18. The State may, in the interest of national welfare or defense, establish and operate vital industries and, **upon payment of just compensation**, transfer to public ownership utilities and other private enterprises to be operated by the Government.

Article XIII. Social Justice and Human Rights

Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and **subject to the payment of just compensation**. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (emphasis added)

[6] Record of the Constitutional Commission Proceedings and Debates, Vol. 3, pp. 16-21; Minutes of the Constitutional Commission dated August 7, 1986.

[7] *National Power Corporation v. Spouses Zabala*, G.R. No. 173520, January 30, 2013, citing *Republic v. Rural Bank of Kabacan, Inc.,* G.R. No. 185124, January 25, 2012, 664 SCRA 233, 244; *National Power Corporation v. Manubay Agro-Industrial Development Corporation*, 480 Phil. 470, 479 (2004).

The determination of just compensation is essentially a judicial function, consistent with the Court's roles as the guardian of the fundamental rights guaranteed by the due process and equal protection clauses, and as the final arbiter over transgressions committed against constitutional rights.[8] This was the teaching in the landmark *Export Processing Zone Authority v. Dulay (Dulay)*[9] wherein the Court held that:

> The determination of "just compensation" in eminent domain cases is a judicial function. **The executive department or the legislature may make the initial determinations <u>but</u>** when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, **no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.** (emphasis added)

Dulay involved an expropriation case for the establishment of an export processing zone. There, the Court declared provisions of Presidential Decree Nos. 76, 464, 794, and 1533 as unconstitutional for encroaching on the prerogative of the judiciary to determine the amount of just compensation to which the affected landowners were entitled. The Court further held that, at the most, the valuation in the decrees may only serve as guiding principles or factors in determining just compensation, but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[10]

The seminal case of *Dulay* paved the way for similar Court pronouncements in other expropriation proceedings. Thus, in *National Power Corporation v. Zabala*,[11] as in the catena of cases that preceded it,[12] the Court refused to apply Sec. 3-A of

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[8] *EPZA v. Dulay*, G.R. No. 59603, April 29, 1987.

[9] *Id*.

[10] *Id*.

[11] G.R. No. 173520, January 30, 2013.

[12] *Republic v. Lubinao,* G.R. No. 166553, July 30, 2009, 594 SCRA 363, 378; *National Power Corporation v. Tuazon,* G.R. No. 193023, June

Republic Act No. 6395, as amended,[13] in determining the amount of just compensation to which the landowner therein was entitled. As held:

> x x x The payment of just compensation for private property taken for public use is guaranteed no less by our Constitution and is included in the Bill of Rights. **As such, no legislative enactments or executive issuances can prevent the courts from determining whether the right of the property owners to just compensation has been violated. It is a judicial function that cannot "be usurped by any other branch or official of the government."** Thus, we have consistently ruled that statutes and executive issuances fixing or providing for the method of computing just compensation are not binding on courts and, at best, are treated as mere guidelines in ascertaining the amount thereof.

To reiterate, the concept of just compensation is uniform across all forms of exercise of eminent domain. There is then neither rhyme nor reason to treat agrarian reform cases differently insofar as the determination of just compensation is concerned. I therefore express my concurrence to the line of cases that ruled that the land valuation by DAR is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party, for, in the end, the courts still

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29, 2011, 653 SCRA 84, 95; and *National Power Corporation v. Saludares,* G.R. No. 189127, April 25, 2012, 671 SCRA 266, 277-278.

[13] Sec. 3A. x x x

In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall:

(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower.

x x x x x x x x x

have the right to review with finality the determination in the exercise of what is admittedly a judicial function.[14]

The jurisdiction of the SAC is original and exclusive

Congress bestowed on the SACs "original and exclusive jurisdiction" over petitions for the determination of just compensation relating to government-taking of properties under the CARL. This could not be any clearer from the language of Sec. 57 of the law, to wit:

> **Section 57.** ***Special Jurisdiction.*** — The Special Agrarian Courts shall have **original and exclusive jurisdiction** over all petitions for the **determination of just compensation to landowners,** and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. (emphasis added)

The fundamental tenet is that jurisdiction can only be granted through legislative enactments,[15] and once conferred cannot be diminished by the executive branch. It can neither be expanded nor restricted by executive issuances in the guise of law enforcement. Thus, although the DAR has the authority to promulgate its own rules of procedure,[16] it cannot modify the "original and exclusive jurisdiction" to settle the issue of just compensation accorded the SACs. Stated in the alternative, the DAR is precluded from vesting upon itself the power to determine the amount of just compensation to which a landowner is entitled.

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[14] *Heirs of Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010.

[15] *Magno v. People,* G.R. No. 171542, April 6, 2011; citing *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559; *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986).

[16] RA 6657, Sec. 49.

This further finds support under Sec. 18 of the CARL, to wit:

> **Section 18.** ***Valuation and Mode of Compensation.*** — The LBP shall compensate the landowner in such amounts **as may be agreed upon** by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, **or as may be finally determined by the court**, as the just compensation for the land. (emphasis added)

As can be gleaned, the CARL contemplates of only two modes of fixing the proper amount of just compensation: either by agreement of the parties, or by court ruling. Should the parties then fail to agree, the only remaining option is to seek court intervention. Notably, the law does not leave to any other body, not even the DAR, the final determination of just compensation. The jurisdiction of the SAC on this matter, therefore, remains to be original and exclusive.

This is consistent with the oft-cited ruling that the taking of property under RA 6657 is an exercise of the power of eminent domain by the State, and that the valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.[17] As held in *Land Bank of the Philippines v. Court of Appeals*:[18]

> It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. **This original and exclusive jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions.** Thus, although the new rules speak of directly appealing the decision of adjudicators to the

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[17] *Land Bank of the Philippines v. Montalvan*, G.R. No. 190336, June 27, 2012; citing *Land Bank of the Philippines v. Court of Appeals*, 376 Phil. 252 (1999); and *Land Bank of the Philippines v. Celada*, 515 Phil. 467 (2006).

[18] 376 Phil. 252 (1999).

RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. **Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to Sec. 57 and therefore would be void.** Thus, direct resort to the SAC by private respondent is valid. (emphasis added)

The Court has applied this holding in numerous other cases. *Heirs of Vidad v. Land Bank of the Philippines*[19] (*Heirs of Vidad*) summarized the Court's jurisprudence on this point thusly:

In *Land Bank of the Philippines v. Wycoco*,[20] the Court upheld the RTC's jurisdiction over Wycoco's petition for determination of just compensation **even where no summary administrative proceedings was held before the DARAB** which has primary jurisdiction over the determination of land valuation. x x x

In *Land Bank of the Philippines v. Court of Appeals*,[21] the landowner filed an action for determination of just compensation **without waiting for the completion of DARAB's re-evaluation of the land.** x x x

In *Land Bank of the Philippines v. Natividad*,[22] wherein Land Bank questioned the alleged **failure of private respondents to seek reconsideration of the DAR's valuation**, but instead filed a petition to fix just compensation with the RTC x x x.

In *Land Bank of the Philippines v. Celada*,[23] where the issue was whether the SAC erred in assuming jurisdiction over respondent's petition for determination of just compensation **despite the pendency of the administrative proceedings before the DARAB** x x x. (emphasis added)

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[19] G.R. No. 166461, April 30, 2010.

[20] G.R. No. 140160, January 13, 2004.

[21] 376 Phil. 252 (1999).

[22] G.R. No. 127198, May 16, 2005.

[23] G.R. No. 164876, January 23, 2006.

In the cases cited in *Heirs of Vidad*, the Court has invariably upheld the original and exclusive jurisdiction of the SACs over petitions for the determination of just compensation, notwithstanding the seeming failure to exhaust administrative remedies before the DAR.

More recently, in *Land Bank of the Philippines v. Montalvan*,[24] therein petitioner argued that the landowner's filing with the SAC of a separate complaint for the determination of just compensation was premature because the revaluation proceedings in the DAR were still pending. The Court ruled, however, that the pendency of the DAR proceedings could not have ousted the SAC from its original and exclusive jurisdiction over the petition for judicial determination of just compensation since "*the function of fixing the award of just compensation is properly lodged with the trial court and is not an administrative undertaking*."[25]

Direct resort to the SAC is, therefore, valid. The Court never considered the issuance of a prior DAR valuation as neither a jurisdictional requirement nor a condition precedent, and in its absence, as a fatal defect.

Allowing the DAR valuation to attain finality diminishes the jurisdiction of the SAC

The dictum allowing the valuation by the DAR to attain finality if not brought before the SAC within 15 days is inconsistent with the above disquisitions. The DAR's valuation, being preliminary in nature, could not attain finality, as it is only the courts that can resolve the issue on just compensation.[26]

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[24] G.R. No. 190336, June 27, 2012.

[25] *Land Bank of the Philippines v. Montalvan*, G.R. No. 190336, June 27, 2012.

[26] *Heirs of Vidad v. Land Bank of the Philippines,* G.R. No. 166461, April 30, 2010; citing *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 382.

Administrative rules that impose a reglementary period for filing a petition before the SAC, consequently allowing the DAR's preliminary valuation to attain finality, unduly diminish the original and exclusive jurisdiction of the SAC, and convert it into an appellate one.

To clarify, the doctrine of "finality of judgment" is reserved only to those rendered by judicial or quasi-judicial bodies in the valid exercise of their jurisdiction. Dispositions of judicial and quasi-judicial bodies on matters within their jurisdiction or competence to decide are valid and binding.[27] On the other hand, a judgment issued without jurisdiction is no judgment at all and cannot attain finality no matter how long a period has elapsed.

The imposition of the 15-day reglementary period ought to then be construed as a claim of jurisdiction. By decreeing that its valuation is capable of attaining finality, the DAR effectively arrogated unto itself the power to make a final determination, a binding judgment, on the amount of just compensation the landowner is entitled to, a power expressly bestowed exclusively upon the courts under Secs. 18 and 57 of the CARL. Consequently, it rendered the proceedings before the SACs appellate in nature, rather than originally commenced thereon.

Moreover, it contravened the Court's doctrine in the landmark case of *Dulay* wherein we held that the judicial branch can never be barred from resolving the issue of just compensation. Apropos herein is a reproduction of the Court's holding in *Dulay*:

> The determination of "just compensation" in eminent domain cases is a **judicial function**. **The executive department or the legislature may make the initial determinations but** when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, **no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings**. **Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.** (emphasis added)

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[27] *Vios v. Patangco*, G.R. No. 163103, February 6, 2009.

The Court's pronouncement in *Republic*[28] should, therefore, be upheld. There, the landowner filed a petition for the determination of just compensation before the SAC beyond the reglementary period mandated by the DAR rules. Nevertheless, the Court held that the outright dismissal of the case was not warranted. Instead, it endeavored to preserve the original and exclusive jurisdiction of the SACs in the following wise:[29]

> In accordance with [the procedure for the determination of compensation cases under R.A. No. 6657], the private respondent's case was properly brought by it in the RTC, and it was error for the latter court to have dismissed the case. In the terminology of [Sec.] 57 [of the CARL], the RTC, sitting as a Special Agrarian Court, has original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners. **It would subvert this original and exclusive jurisdiction of the RTC for the DAR to vest original jurisdiction in compensation cases in administrative officials and make the RTC an appellate court for the review of administrative decisions.**
>
> Consequently, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from [Sec.] 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. **Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into appellate jurisdiction would be contrary to [Sec.] 57 and therefore would be void. What adjudicators are empowered to do is only to determine in a preliminary manner the reasonable compensation to be paid to landowners, leaving to the courts the ultimate power to decide this question.** (emphasis added)

Invoking this doctrine, the Court, in *Suntay*,[30] emphasized that the petition before the SAC is an original action, and not an appeal. It echoed that "*[a]ny effort x x x to convert the original jurisdiction of the RTCs into appellate jurisdiction would be*

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[28] G.R. No. 122256, October 30, 1996.

[29] *Republic v. Court of Appeals,* G.R. No. 122256, October 30, 1996.

[30] G.R. No. 157903, October 11, 2007.

contrary to Section 57 and therefore would be void."[31] Resultantly, the Court ruled that the filing of the petition beyond the 15-day period in that case did not bar the SAC from exercising its original and exclusive jurisdiction in resolving the issue of just compensation.

In line with this ruling, the Court resolved in *Heirs of Vidad*[32] that:

> x x x RA 6657 does not make DARs valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and not the DAR, make the final determination of just compensation. **It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party.** The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function. (emphasis added)

All told, the DAR's valuation cannot be treated as the amount of just compensation the landowner is entitled to, notwithstanding the lapse of 15 days from receipt of notice thereof. It is not in the nature of an award that was "finally determined by the court," for, aside from the DAR not being a court of law, the postulation would render the subsequent petition before the SAC an appeal. This would, in turn, contravene the clear and categorical tenor of the law that the jurisdiction of the SAC, with respect to the issue of just compensation, is **original and exclusive**.

The 15-day reglementary period has no statutory basis

The inapplicability of the 15-day reglementary period is further bolstered by Sec. 16 of the CARL, which outlined the procedure for the acquisition of private lands under the law.[33] While the

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[31] *Land Bank of the Philippines v. Suntay*, G.R. No. 157903, October 11, 2007.

[32] G.R. No. 166461, April 30, 2010.

[33] **Section 16.** ***Procedure for Acquisition of Private Lands.*** — For purposes of acquisition of private lands, the following procedures shall be followed:

provision states that the party who disagrees with the valuation by the DAR may bring the issue to court,[34] the law is silent as to the period for doing so.

It is plain error for respondents to claim that the 15-day period finds basis under Sec. 54 of the CARL, which pertinently reads:

(a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18, and other pertinent provisions hereof.

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowner, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the Land Bank of the Philippines (LBP) shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the government and surrenders the Certificate of Title and other muniments of title.

(d) In case of rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or, in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act, the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.

[34] RA 6657, Sec. 16(f).

Section 54. ***Certiorari.*** — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by certiorari except as otherwise provided in this Act within fifteen (15) days from the receipt of a copy thereof.

The title of the provision itself evinces that the period only applies to *certiorari* petitions before the Court of Appeals (CA) for purposes of reviewing DAR rulings falling within its jurisdiction. It serves to distinguish petitions for certiorari under the CARL from those filed under the Rules of Court, which are allowed a 60-day leeway for filing.[35]

Moreover, any party desiring to appeal a ruling to the CA or to this Court is mandated to do so within fifteen (15) days, as provided under Sec. 60 the CARL.[36] Thus, if Congress intended for the same period to likewise apply to the filing of petitions for the determination of just compensation before the SAC, reckoned from the date of notice from the DAR ruling, then the law would have expressly provided the same.

Succinctly put, there is no basis for requiring the petition for the determination of just compensation to be filed within 15 days from receipt of notice of the DAR's valuation. The validity of Sec. 11, Rule XIII of the 1994 Rules, as reincarnated in Sec. 6, Rule XIX of the 2009 Rules, cannot then be sustained and, instead, must be struck down as void and of no legal effect.

Aside from lacking statutory basis, the imposition of the 15-day reglementary period likewise unduly diminishes the

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[35] RULES OF COURT, Rule 65, Sec. 4.

[36] **Section 60.** ***Appeals.*** — An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within fifteen (15) days receipt of notice of the decision; otherwise, the decision shall become final.

An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of the DAR, as the case may be, shall be by a petition for review with the Supreme Court within a non-extendible period of fifteen (15) days from receipt of a copy of said decision.

jurisdiction vested on the SACs, as earlier discussed. Guilty of reiteration, the duty to fix just compensation is a judicial function, and the jurisdiction of the SACs to set the appropriate value for it is original and exclusive. This is the clear import of Sec. 57 of the CARL. These cardinal doctrines, however, are violated by the imposition of a 15-day reglementary period under Sec. 11, Rule XIII of the 1994 Rules of Procedure and Sec. 6, Rule XIX of the 2009 Rules of Procedure. These rules supplement the perceived silence of the CARL with a provision that contradicts Sec. 57 thereof—vesting the DAR with the authority to render a binding judgment on the valuation of the subject property, and converting the original action before the SAC into an appellate one.

It is settled jurisprudence that a rule or regulation cannot offend or collide with a legal provision. In cases of conflict between the law and the rules and regulations implementing the same, the law must always prevail.[37] The Court said as much in *Miners Association of the Philippines, Inc. v. Factoran*:[38]

> We reiterate the principle that the power of administrative officials to promulgate rules and regulations in the implementation of a statute is necessarily limited only to carrying into effect what is provided in the legislative enactment. The principle was enunciated as early as 1908 in the case of *United States v. Barrias*. The scope of the exercise of such rule-making power was clearly expressed in the case of *United States v. Tupasi Molina*, decided in 1914, thus: "Of course, the **regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law**, and for the sole purpose of carrying into effect its general provisions. **By such regulations, of course, the law itself cannot be extended**. So long, however, as the regulations relate solely to carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. So long, however, as the regulations relate solely to carrying into effect the provision of the law, they are valid." (emphasis added, citations omitted)

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[37] *Commissioner of Internal Revenue v. Bicolandia Drug*, G.R. No. 148083, July 21, 2006.

[38] G.R. No. 98332, January 16, 1995.

The spring cannot rise higher than its source. And just as a statute cannot be at variance with the Constitution, so too must the implementing rules conform to the language of the law.[39] Rules and regulations cannot go beyond the terms and provisions of the basic law they seek to implement. The power to promulgate Rules and Regulations cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned.[40]

Such being the case, Sec. 11, Rule XIII of the 1994 Rules of Procedure and Sec. 6, Rule XIX of the 2009 Rules of Procedure are null and void and of no legal effect. There is no period expressly nor impliedly prescribed by RA 6657 within which landowners may bring an action with the SAC for the determination of the just value of their lots.

Nevertheless, the government, in the interim, is not precluded from proceeding to take the property in issue, provided that the necessary deposit has been made. Thus, while landowners may take their sweet time to institute the said case, the fact that the DAR will proceed to cancel the title of lot owners and replace the same with a Certificate of Land Ownership is more than ample reason for them to file the case with the SAC posthaste. The expropriation process is then, in a manner of speaking, self-policing since the landowners are compelled to litigate and file a case for just compensation if they are unsatisfied with the government's deposit. The inapplicability of the 15-day reglementary period is, therefore, of no moment.

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[39] *Republic of the Philippines v. Bajao*, G.R. No. 160596, March 20, 2009.

[40] *People v. Maceren*, No. L-32166, October 18, 1977, 79 SCRA 450; citing *University of Santo Tomas v. Board of Tax Appeals*, 93 Phil. 376, 382 (1953), citing 12 C.J. 845-46. As to invalid regulations, see *Collector of Internal Revenue v. Villaflor*, 69 Phil. 319 (1940); *Wise & Co. v. Meer*, 78 Phil. 655, 676 (1947); *Del Mar v. Phil. Veterans Administration*, No. L-27299, June 27, 1973, 51 SCRA 340, 349.

In view of the foregoing, I respectfully register my vote to GRANT the instant petition. The 15-day requirement under Sec. 11, Rule XIII of the 1994 DARAB Rules of Procedure and Sec. 6, Rule XIX of the 2009 DARAB Rules of Procedure should be declared NULL and VOID and of no legal effect for being contrary to Sec. 57 of the CARL.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur with the ponencia. The original and exclusive jurisdiction of Special Agrarian Courts to determine just compensation should not be superseded by an executive determination. Therefore, provisions that limit the period when landowners can assert their right to just compensation should be struck down for being outside the constitutional confines of the eminent domain powers of the state.

The ponencia correctly upheld the doctrine in *Export Processing Zone Authority v. Dulay*.[1] The valuation of the Department of Agrarian Reform is merely preliminary.[2] It is even superfluous since the determination of just compensation is a settled role of the judiciary.[3] Nevertheless, Section 16 of Republic Act No. 6657[4] allows the Department of Agrarian Reform to conduct a summary administrative proceeding to determine just compensation. The most relevant portion of this procedure is paragraph (f), which states that "[a]ny party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation."[5]

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[1] 233 Phil. 313 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[2] *Id*. at 326.

[3] *Id*.

[4] Rep. Act No. 6657 is otherwise known as the Comprehensive Agrarian Reform Law of 1988.

[5] Rep. Act No. 6657 (1988), Sec. 16(f).

On the jurisdiction over petitions for the determination of just compensation, Section 57 of Republic Act No. 6657 provides:

> SECTION 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have *original and exclusive jurisdiction* over all ***petitions for the determination of just compensation to landowners***, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied)

Thus, Regional Trial Courts sitting as Special Agrarian Courts have "***original and exclusive jurisdiction*** over all petitions for the determination of just compensation to landowners."[6] The jurisdiction is *original*, which means that petitions for determination of just compensation may be initiated before Special Agrarian Courts. The jurisdiction is *exclusive*, which means that no other court or quasi-administrative tribunal has the same original jurisdiction over these cases.[7] There are no ambiguities in Section 57. No administrative process can subvert this grant of original and exclusive jurisdiction to Special Agrarian Courts.

The right to just compensation is constitutionally enshrined. Article III, Section 9 of the Constitution states that "[p]rivate property shall not be taken for public use without just compensation."[8] Article XIII, Section 4[9] of the Constitution

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[6] Rep. Act No. 6657 (1988), Sec. 57.

[7] *Ong v. Parel*, 240 Phil. 734, 742-743 (1987) [Per *J.* Gutierrez, Jr., Third Division].

[8] CONST., Art. III, Sec. 9.

[9] CONST., Art. XIII, Sec. 4 provides:

> SECTION 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end,

also recognizes the landowner's right to just compensation. As a constitutional right, the determination of just compensation is ultimately a judicial matter. Thus, in *Export Processing Zone Authority*:

> The determination of "just compensation" in eminent domain cases is a judicial function. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "just-ness" of the decreed compensation.[10]

Section 57, which vests in the courts original and exclusive jurisdiction to determine just compensation, is consistent with the Constitution.

Although Section 54 of Republic Act No. 6657 states that "[a]ny decision, order, award or ruling of the D[epartment] [of] A[grarian] R[eform] on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act . . . may be brought to the Court of Appeals by certiorari,"[11] this must be read in relation to Section 57.

Section 54 generally covers all decisions, orders, awards, or rulings of the Department of Agrarian Reform. On the other hand, Section 57 is a more specific provision that expressly

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the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[10] *Export Processing Zone Authority v. Dulay*, 233 Phil. 313, 326 (1987) [Per *J.* Gutierrez, Jr., *En Banc*].

[11] Rep. Act No. 6657 (1988), Sec. 54.

vests special jurisdiction over the determination of just compensation in Special Agrarian Courts.

Further, agrarian dispute under Section 3 is defined as follows:

> SECTION 3. *Definitions*. – . . . .
>
> (d) Agrarian Dispute refers to any controversy relating to tenurial arrangements, whether leasehold, tenancy, stewardship or otherwise, over lands devoted to agriculture, including disputes concerning farmworkers' associations or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of such tenurial arrangements.
>
> It includes any controversy relating to compensation of lands acquired under this Act and other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee.

An agrarian dispute generally refers to conflicts between farmers, or between farmers and their landlords. The conflict between landowners and government, in instances of expropriation, is not included.

Although "any controversy relating to compensation of lands acquired under this Act"[12] is an agrarian dispute under Section 3, paragraph 2 of Republic Act No. 6657, this cannot encompass just compensation for a landowner. This contemplation would be in direct conflict with the unambiguous text of Section 57, as well as the constitutional right to just compensation.

Moreover, there are two (2) types of compensation that may take place under agrarian reform. The first is the just compensation that must be paid by government upon condemnation, or the taking of land from a landowner. The second is the compensation that may be paid by farmer-beneficiaries who acquire ownership over land through a

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[12] Rep. Act No. 6657 (1988), Sec. 3(d).

certificate of land ownership award.[13] Thus, compensation under Section 3 refers only to the second type of compensation.

The ponencia described the nature of the original and exclusive jurisdiction of Special Agrarian Courts.[14] The original jurisdiction of the Special Agrarian Court means that it is not exercising its appellate jurisdiction; hence, it is not tasked with reviewing the executive's determination of just compensation. The Department of Agrarian Reform's determination is, at best, recommendatory to the courts. The courts have the discretion of disregarding the recommendation of the Department of Agrarian Reform. Nothing in the Constitution mandates the judiciary to follow recommendations coming from the executive.

Section 57 does not provide a time period for a landowner to file a petition for the determination of just compensation, even in the context of agrarian reform. Ordinary rules on prescription should apply. An action to recover just compensation over expropriated land constitutes a real action over an immovable. Under Article 1141[15] of the Civil Code, this kind of action prescribes after 30 years.

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[13] Rep. Act No. 6657 (1988), Sec. 21 provides:

SEC. 21. *Payment of Compensation by Beneficiaries Under Voluntary Land Transfer.*- Direct payment in cash or in kind may be made by the farmer-beneficiary to the landowner under terms to be mutually agreed upon by both parties, which shall be binding upon them, upon registration with and approval by the DAR. Said approval shall be considered given, unless notice of disapproval is received by the farmer-beneficiary within 30 days from the date of registration.

In the event they cannot agree on the price of the land, the procedure for compulsory acquisition as provided in Section 16 shall apply. The LBP shall extend financing to the beneficiaries for purposes of acquiring the land.

[14] *Ponencia,* p. 11.

[15] CIVIL CODE, Art. 1141 provides:

ARTICLE 1141. Real actions over immovables prescribe after thirty years.

This provision is without prejudice to what is established for the acquisition of ownership and other real rights by prescription.

Petitioner filed her Petition to determine just compensation within one (1) year after the Department of Agrarian Reform released the Notice of Valuation and Acquisition.[16] This Court should not count prescription from the Department of Agrarian Reform's final order on the valuation of the property as it would shift the nature of the action as appellate.

It is when government showed that it would acquire petitioner's property that petitioner's right to file an action relating to just compensation began. This action may be brought concurrently with the proceedings before the Department of Agrarian Reform, assuming that the landowner no longer challenges the right of government to expropriate.

Petitioner's action has not yet prescribed since she filed the Petition within one (1) year after finding out that government would acquire her land. Hence, the Special Agrarian Court should not have dismissed the case and proceeded to determine just compensation, as tasked under our Constitution and the law.

In addition, the Court of Appeals erred in affirming the dismissal of Civil Case No. 12558 solely on the ground that petitioner chose the wrong remedy. This Court has repeatedly ruled against the dismissal of appeals based purely on strict application of technicalities.[17] Instead of summarily dismissing the case, the Court of Appeals should have treated the Petition for Certiorari as an appeal filed under Rule 41 of the Rules of Court; it should have endeavored to resolve the case on its merits:

> [C]ases should be determined on the merits, after all parties have been given full opportunity to ventilate their causes and defenses, rather than on technicalities or procedural imperfections. In that way, the ends of justice would be served better. *Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application*

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[16] *Ponencia,* p. 2, *citing rollo,* pp. 82–85.

[17] *Catindig v. Court of Appeals*, 177 Phil. 624, 630 1979) [Per *J.* De Castro, First Division].

of rules, resulting in technicalities that tend to frustrate rather than promote substantial justice, must be avoided. In fact, Section 6 of Rule 1 states that the Rules [on Civil Procedure] shall be liberally construed in order to promote their objective of ensuring the just, speedy and inexpensive disposition of every action and proceeding.[18] (Emphasis in the original)

In cases that involve fundamental rights, such as this, the Court of Appeals should observe a reasonable relaxation of the rules of procedure.

ACCORDINGLY, I vote to **GRANT** the Petition. The case is remanded to Branch 30 of the Regional Trial Court of Dumaguete City for determination of just compensation over petitioner Jocelyn S. Limkaichong's expropriated property.

SEPARATE CONCURRING OPINION

JARDELEZA, *J.*:

I concur with the *ponencia* of my esteemed colleague Associate Justice Lucas P. Bersamin who, with his lucidity of exposition and fealty to the due process tenet of prospective application of new doctrine, masterfully secured our unanimous vote today.

The *ponencia* reaffirms our unanimous *en banc* declaration in *Land Bank of the Philippines v. Martinez*[1] that:

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[18] *Ching v. Cheng,* G.R. No. 175507, October 8, 2014, 737 SCRA 610, 634-635 [Per *J.* Leonen, Second Division], *citing Posadas-Moya and Associates Construction Co., Inc. v. Greenfield Development Corporation*, 451 Phil. 647, 661 (2003) [Per *J.* Panganiban, Third Division], *in turn citing Jara v. Court of Appeals*, 427 Phil. 532, 548 (2002) [Per *J.* Carpio, Third Division]; *Paras v. Baldado*, 406 Phil. 589, 596 (2001) [Per *J.* Gonzaga-Reyes, Third Division]; *Cusi-Hernandez v. Diaz*, 390 Phil. 1245, 1252 (2000) [Per *J.* Panganiban, Third Division]; *Republic v. Court of Appeals*, 354 Phil. 252, 260 (1998) [Per *J.* Mendoza, Second Division]; *Malonzo v. Zamora*, 370 Phil. 240, 257 (1999) [Per *J.* Romero, *En Banc*]; and *Fortich v. Corona*, 352 Phil. 461, 481-482 (1998) [Per *J.* Martinez, Second Division].

[1] G.R. No. 169008, July 31, 2008, 560 SCRA 776.

[T]he agrarian reform adjudicator's decision on land valuation **attains finality after the lapse of the 15-day period** stated in the DARAB Rules. The petition for the fixing of just compensation should therefore, following the law and settled jurisprudence, be filed with the SAC within the said period.

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[W]hile a petition for the fixing of just compensation with the SAC is not an appeal from the agrarian reform adjudicator's decision but an original action, **the same has to be filed within the 15-day period stated in the DARAB Rules; otherwise, the adjudicator's decision will attain finality.**[2] (Citations omitted, emphasis supplied.)

In no uncertain terms, Justice Bersamin underscores that the Court made its declaration in *Martinez* "to purge any uncertainties brought upon by the conflicting jurisprudence on the matter"[3] and to "unanimously resolve[d] [a] jurisprudential conundrum."[4] After today, there should be no more doubt about the "**preeminence** of the pronouncement x x x that the parties only have 15 days from their receipt of the decision/order of the DAR within which to invoke the original and exclusive jurisdiction of the SAC; otherwise, the decision/order attains finality and immutability."[5]

I write only to address the concurring opinions of Justice Presbitero J. Velasco and Justice Marvic M.V.F. Leonen.

I

Article VIII, Section 1 of the 1987 Constitution[6] provides that "(j)udicial power includes the duty of the courts of justice

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[2] *Ponencia*, pp. 11-12.

[3] *Id.* at 11.

[4] *Id.* at 13.

[5] *Id.* at 12, emphasis supplied.

[6] Sec. 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,

to settle actual controversies involving rights which are legally demandable and enforceable."

The right of a landowner to just compensation for the taking of his or her private property is a legally demandable and enforceable right guaranteed by no less than the Bill of Rights, under Section 9, Article III of the Constitution.[7] Thus, the determination of just compensation in cases of eminent domain is an actual controversy that calls for the exercise of judicial power by the courts. This is what the Court means when it said that "[t]he determination of 'just compensation' in eminent domain cases is a judicial function."[8]

There is, however, no constitutional provision, policy, principle, value or jurisprudence that places the determination of *any* justiciable controversy beyond the reach of Congress' constitutional power and prerogative to require, through a grant of primary jurisdiction, that *a* controversy be first referred to an expert administrative agency for adjudication, subject to subsequent judicial review.

The authority of Congress to create administrative agencies and grant them preliminary jurisdiction flows not only from the exercise of its plenary legislative power[9] but also from its constitutional power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court.[10]

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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.

[7] This section provides: "Private property shall not be taken for public use without just compensation."

[8] *Export Processing Zone Authority (EPZA) v. Dulay,* G.R. No. 59603, April 29, 1987, 149 SCRA 305,316.

[9] *Bank of Commerce v. Planters Development Bank*, G.R. Nos. 154470-71 & 154589-90, September 24, 2012, 681 SCRA 521.

[10] *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.,* 94 Phil. 932, 938 (1954). See also CONSTITUTION, Article VIII, Sec. 2.

In *Tropical Homes, Inc. v. National Housing Authority,*[11] it has been settled that "[t]here is no question that a statute may vest exclusive original jurisdiction in an administrative agency over certain disputes and controversies falling within the agency's special expertise."[12] Rule 43 of the Revised Rules of Court, which provides for a uniform procedure for appeals from a long list of quasi-judicial agencies to the Court of Appeals, is a loud testament to the power of Congress to vest myriad agencies with the preliminary jurisdiction to resolve controversies within their particular areas of expertise and experience.

On June 10, 1988, Congress enacted Republic Act No. 6657[13] (RA 6657) to implement a comprehensive agrarian reform program. In sharp contrast to Presidential Decree No. 27[14] (PD 27), which covered only rice and corn lands, RA 6657 sought to cover *all* private and public agricultural lands. It is the Government's most ambitious land reform program ever, subjecting an estimated 7.8 million hectares of land for acquisition and redistribution to landless farmer and farmworker beneficiaries.[15]

With a project of such scale, the Congress decided to, among others, vest the DAR with primary jurisdiction to determine just compensation, subject, to final review by the courts. Thus, Section 16 of RA 6657 provides:

Section 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

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[11] G.R. No. L-48672, July 31, 1987, 152 SCRA 540.

[12] *Id.* at 548.

[13] Comprehensive Agrarian Reform Law of 1988.

[14] Decreeing The Emancipation Of Tenants From The Bondage Of The Soil, Transferring To Them The Ownership Of The Land They Till And Providing The Instruments And Mechanism Therefor (1972).

[15] Q and A on CARP<http://www.dar.gov.ph/q-and-a-on-carp/english>(Last accessed on August 5, 2016.)

(d) In case of rejection or failure to reply, **the DAR shall conduct summary administrative proceedings to determine the compensation for the land** requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision. (Emphasis supplied.)

In case a party disagrees with the DAR's decision on the amount of compensation, Section 16 and related provisions allow him to bring the matter to the courts for final determination, as follows:

Section 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

x x x x x x x x x

(f) **Any party who disagrees with the [DAR's] decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.**

x x x x x x x x x

Section 56. *Special Agrarian Court.* — The Supreme Court shall designate at least one (1) branch of the Regional Trial Court (RTC) within each province to act as a Special Agrarian Court. x x x

Section 57. *Special Jurisdiction.* — The Special Agrarian Courts shall have **original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners**, and the prosecution of all criminal offenses under this Act. The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied.)

Appeals from SAC decisions may thereafter be taken to the Court of Appeals (and later the Supreme Court) via a petition for review.[16]

The validity of the grant by Congress to the DAR of the primary jurisdiction to determine just compensation, under the summary administrative process in Section 16 of RA 6657, has been settled by this Court more than twenty-five (25) years ago in the landmark case of *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform.*[17] There, this Court upheld the constitutionality of RA 6657 and, with specific reference to Section 16, declared:

Objection is raised, however, to the manner of fixing the just compensation, which it is claimed is entrusted to the administrative authorities in violation of judicial prerogatives. Specific reference is made to Section 16(d), which provides that in case of the rejection or disregard by the owner of the offer of the government to buy his land—

> x x x the DAR shall conduct summary administrative proceedings to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

To be sure, the determination of just compensation is a function addressed to the courts of justice and may not be usurped by any other branch or official of the government. x x x

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[16] RA 6657, Sec. 60. *Appeals*. — An appeal may be taken from the decision of the Special Agrarian Courts by filing a petition for review with the Court of Appeals within fifteen (15) days receipt of notice of the decision; otherwise, the decision shall become final. An appeal from the decision of the Court of Appeals, or from any order, ruling or decision of the DAR, as the case may be, shall be by a petition for review with the Supreme Court within a non-extendible period of fifteen (15) days from receipt of a copy of said decision.

[17] G.R. No. 78742, July 14, 1989, 175 SCRA 343.

x x x x x x x x x

A reading of the aforecited Section 16(d) will readily show that it does <u>not</u> suffer from the arbitrariness that rendered the challenged decrees [in *EPZA v. Dulay*] constitutionally objectionable. Although the proceedings are described as summary, the landowner and other interested parties are nevertheless allowed an opportunity to submit evidence on the real value of the property. But **<u>more importantly, the determination of the just compensation by the DAR is not by any means final and conclusive upon the landowner or any other interested party, for Section 16(f) clearly provides</u>:**

> **Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation.**

The determination made by the DAR is only preliminary unless accepted by all parties concerned. Otherwise, the courts of justice will still have the right to review with finality the said determination in the exercise of what is admittedly a judicial function.[18] (Emphasis and underscoring supplied).

At this point, it should be emphasized that Congress in RA 6657 provided for a *heightened* judicial review of the DAR's preliminary determination of just compensation pursuant to Section 16. In case of a proper challenge, SACs are actually empowered to conduct a *de novo* review of the DAR's decision. Under RA 6657, a full trial is held where SACs are authorized to (1) appoint one or more commissioners,[19] (2) receive, hear, and retake the testimony and evidence of the parties, and (3) make findings of fact anew. In other words, in exercising its **exclusive and original jurisdiction** to determine just compensation under RA 6657, the SAC is possessed with exactly the same powers and prerogatives of a Regional Trial Court (RTC) under Rule 67 of the Revised Rules of Court.

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[18] *Id.* at 380-382.

[19] RA 6657, Sec. 58.

In such manner, the SAC thus conducts a more *exacting* type of review, compared to the procedure provided either under Rule 43 of the Revised Rules of Court, which governs appeals from decisions of administrative agencies to the Court of Appeals, or under Book VII, Chapter 4, Section 25[20] of the Administrative Code of 1987,[21] which provides for a default administrative

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[20] This provision reads as follows:

Sec. 25. *Judicial Review*. –

(1) Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.

(2) Any party aggrieved or adversely affected by an agency decision may seek judicial review.

(3) The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.

(4) Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order. Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall how, by stating the specific material dates, that it was filed within the period fixed in this chapter.

(5) The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.

(6) The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.

(7) Review shall be made on the basis of the record taken as a hole. The findings of fact of the agency when supported by substantial evidence shall be final except when specifically provided otherwise by law.

[21] Executive Order No. 292.

review process. In both cases, the reviewing court decides based on the record, and the agency's findings of fact are held to be binding when supported by substantial evidence.[22] The SAC, in contrast, retries the whole case, receives new evidence, and holds a full evidentiary hearing.

In this light, until and unless this Court's ruling in *Association of Small Landowners* is reversed, a becoming modesty and respectful courtesy towards a co-equal branch of government demand that the Court defer to the Congress' grant of primary jurisdiction to the DAR.

The grant of primary jurisdiction to administrative agencies over otherwise immediately justiciable controversies is constitutionally permissible because, as explained in the case of *Far East Conference v. United States*,[23] courts and agencies are both instrumentalities of justice, with complementary roles in the pursuit of similar ends:

> [C]ourt and agency are not to be regarded as wholly independent and unrelated instrumentalities of justice, each acting in the performance of its prescribed statutory duty without regard to the appropriate function of the other in securing the plainly indicated objects of the statute. **Court and agency are the means adopted to attain the prescribed end, and, so far as their duties are defined by the words of the statute, those words should be construed so as to attain that end through coordinated action.** Neither body should repeat in this day the mistake made by the courts of law when equity was struggling for recognition as an ameliorating system of justice; neither can rightly be regarded by the other as an alien intruder, to be tolerated if must be, but never to be encouraged or aided by the other in the attainment of the common aim. (Citations omitted, emphasis supplied.)

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[22] See Section 25(7), Chapter 4, Book VII of the Administrative Code of 1987 and *NGEI Multi-Purpose Cooperative, Inc. v. Filipinas Palmoil Plantation, Inc*, G.R. No. 184950, October 11, 2012, 684 SCRA 152, 163.

[23] *Far East Conference v. United States,* 342 U.S. 570 (1952).

II

Justice Velasco, citing *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines,*[24] opines that direct resort to the SAC is valid as the Court has never considered the issuance of a prior DAR valuation a jurisdictional requirement or condition precedent.[25]

Justice Leonen argues that the determination of the DAR is "superfluous," being only "recommendatory to the courts."[26] Since "nothing in the Constitution mandates the judiciary to follow recommendations coming from the executive," he asserts that the DAR's determination can even be disregarded by the courts.[27]

I disagree.

We read *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines* differently. It held that the determination by DAR of the amount of just compensation becomes final if not elevated "on time" to SAC:

> It must be emphasized that the taking of property under RA 6657 is an exercise of the State's power of eminent domain. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. When the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties. On the other hand, the determination of just compensation in the RARAD/DARAB requires the voluntary agreement of the parties. Unless the parties agree, there is no settlement of the dispute before the RARAD/DARAB, **except if the aggrieved party fails to file a petition for just compensation <u>on time</u> before the RTC**.[28] (Citations omitted, emphasis and underscoring supplied.)

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[24] G.R. No. 166461, April 30, 2010, 619 SCRA 609.

[25] Dissenting Opinion of Justice Velasco, p. 7.

[26] Dissenting Opinion of Justice Leonen, pp. 1, 4.

[27] Dissenting Opinion of Justice Leonen, p. 4.

[28] G.R. No. 166461, April 30, 2010, 619 SCRA 609, 630.

Neither landowner nor agency can disregard the administrative process provided under RA 6657 without offending the constitutional prerogative of the Congress to grant primary jurisdiction to the DAR.

> x x x [I]n cases raising issues of fact not within the conventional experience of judges or cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined. **Uniformity and consistency in the regulation of business entrusted to a particular agency are secured, and the limited functions of review by the judiciary are more rationally exercised, by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure**.[29] (Emphasis supplied.)

The adjudication by the DAR on just compensation is not an executive recommendation or a superfluity to be blithely dismissed by the courts. They are, rather, quasi-judicial decisions reached as a result of what the Administrative Code of 1987 considers as a contested case, where "legal rights, duties or privileges asserted by specific parties as required by the Constitution or by law are x x x determined after hearing."[30] These decisions become final and immutable if not timely challenged before the SAC. The SAC, in resolving such challenge, must dispose, affirm or reverse the administrative agency's determination by way of a full decision, expressing "clearly and distinctly the facts and the law" on which the SAC decision is based.[31]

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[29] *Far East Conference v. United States, supra.*

[30] Sec. 2(5), Chapter I, Book VII of the Administrative Code of 1987.

[31] CONSTITUTION, Art. VIII, Sec. 14.

III

The requirement for a fifteen-day period to file with the SAC is expressly provided for in RA 6657 and its validity foreclosed by our ruling in *Martinez*.

Justice Velasco is, however, of the view that there is no statutory basis for the imposition of a fifteen-day period and asserts that Section 11, Rule XIII of the 1994 Department of Agrarian Reform Adjudication Board (DARAB) Rules of Procedure and Section 6, Rule XIX of the 2009 DARAB Rules of Procedure must be struck down as void and of no legal effect.[32]

Again, I disagree.

The fifteen-day period is provided for in Sections 51 and 54, in relation to Section 57, of RA 6657, which provides as follows:

> Section 51. *Finality of Determination*. — Any case or controversy before it shall be decided within thirty (30) days after it is submitted for resolution. Only one (1) motion for reconsideration shall be allowed. **Any order, ruling or decision shall be final after the lapse of fifteen (15) days from receipt of a copy thereof.**
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> x x x x x x x x x
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> Section 54. *Certiorari*. — Any decision, order, award or ruling of the DAR on any agrarian dispute or on any matter pertaining to the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform may be brought to the Court of Appeals by certiorari except as otherwise provided in this Act **within fifteen (15) days from the receipt** of a copy thereof. The findings of fact of the DAR shall be final and conclusive if based on substantial evidence.
>
> x x x x x x x x x
>
> Section 57. *Special Jurisdiction*. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act. The Rules of

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[32] Dissenting Opinion of JusticeVelasco, p. 10.

Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act. The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision. (Emphasis supplied.)

While Section 51 expressly provides for the fifteen-day period, Section 54 states that any decision of the DAR on any agrarian dispute or matter pertaining to the implementation of the Act (including, perforce, determination of just compensation) may be brought to the Court of Appeals within fifteen (15) days from receipt of a copy of the DAR decision, "except as otherwise provided in the Act." The proviso refers to the exception provided under Section 57, namely, the special jurisdiction of the SAC to determine just compensation. On top of Section 51, Sections 54 and 57, read together, provide that decisions of the DAR become final within fifteen (15) days from receipt of the decision, unless brought to the Court of Appeals under Section 54, or to the SAC under Section 57.

Even assuming arguendo Justice Velasco is correct in stating that RA 6657 does not provide for the fifteen-day period, the constitutional and statutory authority of the DAR to promulgate its own rules of procedure is not in issue in this case. Neither is the validity of the DARAB Rules of Procedure. The DARAB Rules of Procedure were promulgated under authority of Sections 49 and 50 of RA 6657, which grant the DAR the power to "issue rules and regulations, whether substantive or procedural, to carry out"[33] RA 6657 and "adopt a uniform rule of procedure to achieve a just, expeditious and inexpensive determination for every action or proceeding before it."[34]

This Court, in *Eastern Shipping Lines, Inc. v. Philippine Overseas Employment Authority,*[35] has recognized the power of administrative bodies to "fill in the details" to implement

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[33] RA 6657, Sec. 49.

[34] RA 6657, Sec. 50.

[35] G.R. No. 76633, October 18, 1988, 166 SCRA 533.

the policies laid down in a statute through supplementary regulation.

More, the Administrative Code of 1987 which provides for, among others, a default uniform procedure for the judicial review of decisions of administrative agencies, also provides that decisions of administrative agencies become final after fifteen (15) days from receipt of the agency order.[36] The Administrative Code of 1987 provides, in pertinent part:

Book VII
Administrative Procedure

x x x

Chapter 3
Adjudication

x x x

Section 14. *Decision.* — Every decision rendered by the agency in a contested case shall be in writing and shall state clearly and distinctly the facts and the law on which it is based. The agency shall decide each case within thirty (30) days following its submission. The parties shall be notified of the decision personally or by registered mail addressed to their counsel of record, if any, or to them.

Section 15. *Finality of Order.* — The decision of the agency shall become final and executory fifteen (15) days after the receipt of a copy thereof by the party adversely affected unless within that period an administrative appeal or judicial review, if proper, has been perfected. One motion for reconsideration may be filed, which shall suspend the running of the said period.

x x x

Chapter 4
Administrative Appeal in Contested Cases

x x x

Section 23. *Finality of Decision of Appellate Agency.* — In any contested case, the decision of the appellate agency shall become

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[36] Chapters 3 and 4, Book VII, Administrative Code of 1987.

final and executory fifteen (15) days after the receipt by the parties of a copy thereof.

x x x

Section 25. *Judicial Review.* —

(1) **Agency decisions shall be subject to judicial review in accordance with this chapter and applicable laws.**

(2) Any party aggrieved or adversely affected by an agency decision may seek judicial review.

(3) The action for judicial review may be brought against the agency, or its officers, and all indispensable and necessary parties as defined in the Rules of Court.

(4) **Appeal from an agency decision shall be perfected by filing with the agency within fifteen (15) days from receipt of a copy thereof a notice of appeal, and with the reviewing court a petition for review of the order.** Copies of the petition shall be served upon the agency and all parties of record. The petition shall contain a concise statement of the issues involved and the grounds relied upon for the review, and shall be accompanied with a true copy of the order appealed from, together with copies of such material portions of the records as are referred to therein and other supporting papers. The petition shall be under oath and shall show, by stating the specific material dates, that it was filed within the period fixed in this chapter.

(5) **The petition for review shall be perfected within fifteen (15) days from receipt of the final administrative decision. One (1) motion for reconsideration may be allowed. If the motion is denied, the movant shall perfect his appeal during the remaining period for appeal reckoned from receipt of the resolution of denial. If the decision is reversed on reconsideration, the appellant shall have fifteen (15) days from receipt of the resolution to perfect his appeal.**

(6) **The review proceeding shall be filed in the court specified by statute or, in the absence thereof, in any court of competent jurisdiction in accordance with the provisions on venue of the Rules of Court.**

(7) Review shall be made on the basis of the record taken as a whole. The findings of fact of the agency when supported

> by substantial evidence shall be final except when specifically provided otherwise by law. (Emphasis supplied.)

The Revised Rules of Court finally also provide, under Rule 43, Section 4, for a fifteen-day period of finality for agency action.[37]

IV

Justice Leonen suggests that the applicable time limit to bring the DAR decision to the SAC is the thirty (30) year prescriptive period over real actions provided under the Civil Code.[38]

I disagree.

A thirty-year period is unreasonable. It is oppressive to the landowner, to the DAR and the Land Bank of the Philippines (LBP) because it violates the Constitution's command that "[a]ll persons shall have the right to a *speedy* disposition of their cases before all judicial, quasi-judicial, or administrative bodies."[39] It also defeats the primordial objective of the Revised Rules of Court "of securing a just, *speedy* and inexpensive disposition of every action and proceeding."[40]

A thirty-year period will also impermissibly erode the "justness" of the just compensation inasmuch as just compensation requires that the payment be made **closest to** the taking:

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[37] Rule 43, Sec. 4.*Period of appeal*.— The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. x x x

[38] Dissenting Opinion of Justice Leonen, p. 4.

[39] CONSTITUTION, Art. III, Sec. 16.

[40] RULES OF COURT, Rule 1, Sec. 6.

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also **the payment of the land within a reasonable time from its taking.** Without prompt payment, **compensation cannot be considered "just" inasmuch as the property owner is being made** to suffer the consequences of being immediately deprived of his land while being made **to wait for a decade or more before actually receiving the amount necessary to cope with his loss.**[41] (Citations omitted, emphasis supplied.)

Finally, the constitutional guarantee of equal protection of the laws demands that a thirty-year period should be available to both the landowner and the DAR/LBP. Under this regime, landowners would be tempted to speculate on receiving interest if they postpone the filing of the action to determine just compensation, thus, shifting the burden of the risk of inflation to the Government. This, in turn, will disturb the Government's budget process and consequently increase the cost to be incurred by the Government in implementing land reform. Conversely, unscrupulous DAR/LBP functionaries may be tempted to unduly delay appeal for corrupt reasons. This will leave a landowner uncertain, for the duration of the thirty-year period, as to the true value of his property, the very evil he is sought to be protected from by *Martinez*:

> x x x This rule is not only in accord with law and settled jurisprudence but also with the principles of justice and equity. Verily, a belated petition before the SAC, *e.g.*, one filed a month, or a year, or even a decade after the land valuation of the DAR adjudicator, must not leave the dispossessed landowner in a state of uncertainty as to the true value of his property.[42]

I vote to **GRANT** the petition.

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[41] *Apo Fruits Corporation v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 514 SCRA 537, 557-558.

[42] *Supra* note 1 at 783.

FIRST DIVISION

[A.C. No. 8825. August 3, 2016]

BUDENCIO DUMANLAG, *complainant, vs.* **ATTY. JAIME M. BLANCO, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; SHOULD DEFEND THE CAUSE OF THEIR CLIENTS WITH FIDELITY, CARE, DEVOTION, AND WITHIN THE BOUNDS OF LAW.—** A lawyer is charged with the duty to defend "the cause of his client with wholehearted fidelity, care, and devotion." Nevertheless, the Code of Professional Responsibility circumscribes this duty with the limitation that lawyers shall perform their duty to the client within the bounds of law. In this case, Atty. Blanco performed this duty to his client without exceeding the scope of his authority. As early as 1996, this Court declared in *Intestate Estate* that T.P. 4136 was null and void. x x x Given the nullity of T.P. 4136, the claim of the Heirs of San Pedro against EMIDCI has no legal basis. On the other hand, the records reveal that the Sampaloc property is registered in the name of EMIDCI as TCT 79146 under the Torrens system. As such, the TCT enjoys a conclusive presumption of validity. Hence, complainant had a baseless claim, which Atty. Blanco correctly resisted. In writing the two letters rejecting complainant's claim, he merely acted in defense of the rights of his client. In doing so, he performed his duty to EMIDCI within the bounds of law. Consequently, there was no misconduct to speak of on the part of Atty. Blanco. In fact, he should even be commended as he remained steadfast in maintaining the cause of his client even as he was subjected to harassment.

2. **REMEDIAL LAW; ACTIONS; MALICIOUS COMPLAINTS; THE ERRING COMPLAINANT MAY BE PENALIZED FOR FILING IN BAD FAITH A GROUNDLESS COMPLAINT; PENALTY.—** As a rule, a complainant should not be penalized for the exercise of the right to litigate. But the

rule applies only if the right is exercised in good faith. When a groundless complaint is filed in bad faith, the Court has to step in and penalize the erring complainant. The policy of insulation from intimidation and harassment encourages lawyers to stay their course and perform their duties without fear. They are better able to function properly and ultimately contributes "to the efficient delivery and proper administration of justice." On the other hand, failure to shield lawyers from baseless suits serves "only to disrupt, rather than promote, the orderly administration of justice." In this case, complainant knew fully well that his complaint was totally unfounded. x x x [T]he Complaint filed against respondent is nothing but an attempt to intimidate, harass and coerce him into acceding to the demands of complainant. This is the only logical conclusion that can be derived from the filing of a Complaint for Disbarment that is baseless — a fact that complainant was very much aware of. x x x The penalty for filing a malicious complaint varies from censure to a fine as high as ₱5,000. x x x Considering the circumstances present in this case, complainant appears to be devious, persistent and incorrigible, such that mere censure as penalty would not suffice. He has trifled with the Court, using the judicial process as an instrument to willfully pursue a nefarious scheme. The imposition of a ₱5,000 fine is appropriate.

3. ID.; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; COMMITTED WHEN THERE IS DISOBEDIENCE OF OR RESISTANCE TO A LAWFUL WRIT, PROCESS, ORDER, OR JUDGMENT OF A COURT.— For making a demand on EMIDCI to recognize the claim of ownership of the Heirs of San Pedro, complainant appears to have disobeyed the order of the Court in *Intestate Estate*, insofar as the Court enjoined agents of the estate from exercising any act of possession or ownership over the lands covered by the T.P. For this reason, the Court finds it appropriate to direct the complainant to show cause why he should not be cited for indirect contempt for failing to comply with the order given in that Decision. Indirect contempt is committed when there is "[d]isobedience of or resistance to a lawful writ, process, order, or judgment of a court."

D E C I S I O N

SERENO, *C.J.*:

Before this Court is an administrative Complaint for Disbarment against respondent Atty. Jaime M. Blanco for rejecting complainant's claim over a parcel of land based on a Spanish Title.

FACTUAL ANTECEDENTS

Under Transfer Certificate of Title No. (TCT) 79146,[1] El Mavic Investment and Development Co., Inc. (EMIDCI) appears to be the registered owner of the land it occupies at the corner of Ramon Magsaysay Boulevard and C. de Dios Street in Sampaloc, Manila (Sampaloc property).

Complainant Budencio Dumanlag sent a letter dated 9 August 2010 to EMIDCI's President, Victoriano Chung, claiming to be an agent of the Heirs of Don Mariano San Pedro (the Heirs of San Pedro) based on a Special Power of Attorney dated 14 October 1999.[2] Complainant asserted that the Heirs of San Pedro, and not EMIDCI, owned the Sampaloc property, predicating such claim on a Spanish Title, *Titulo de Propriedad* No. (T.P.) 4136.[3] He further stated in the letter that the Heirs of San Pedro were selling the Sampaloc property, and that he had given EMIDCI the option to buy it.

Victoriano Chung referred the matter to EMIDCI's counsel, respondent[4] Atty. Jaime M. Blanco, Jr. (Atty. Blanco), who rejected the claim. In a letter[5] dated 16 August 2010, the latter explained that the Supreme Court had declared T.P. 4136 null

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[1] *Rollo,* pp. 41-45.

[2] *Id.*, pp. 50-52.

[3] *Id*. at 50.

[4] *Rollo,* p. 21.

[5] *Id*. at 11-13.

and void in *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. Court of Appeals.*[6] Demand was made on Dumanlag and his principals to cease and desist from further harassing EMIDCI.

Complainant sent another letter to Mr. Chung dated 1 September 2010.[7] While acknowledging the Court's decision, the former alleged that *Intestate Estate* excluded the Heirs of San Pedro from the enumeration of persons prohibited from selling lands covered by T.P. 4136, including the Sampaloc property.

Atty. Blanco rejected complainant's claim once more through another letter[8] dated 13 September 2010. He reasoned that the Supreme Court Decision held that the heirs were specifically prohibited from exercising any act of ownership over the lands covered by T.P. 4136.

On 22 October 2010, complainant filed this administrative case for disbarment against Atty. Blanco, alleging that Mr. Chung was a squatter on the Sampaloc Property and Atty. Blanco had unjustly prevented the exercise of complainant's rights over the same.[9]

In his Verified Comment,[10] Atty. Blanco alleged that the Complaint was frivolous, unfounded and retaliatory. He averred, among others, that complainant, in his second demand letter to Mr. Chung, had attached two draft pleadings. The first was a draft petition for certiorari against the latter;[11] the second, a draft complaint for disbarment against Atty. Blanco.[12] According

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[6] 333 Phil. 597 (1996).

[7] Annex "10".

[8] *Id*. at 116-118.

[9] *Rollo,* p. 6.

[10] *Id*. at 20-40.

[11] Annex "10-A", *id.* at 89-94.

[12] Annex "10-B", *id.* at 108-112.

to respondent, these drafts were meant to intimidate him and Mr. Chung. True enough, after Atty. Blanco sent his second letter to complainant, the latter filed with the Court of Appeals the draft petition, which was later dismissed. Complainant subsequently filed the Complaint for Disbarment.

Atty. Blanco also moved that the Court direct complainant to show cause why the latter should not be cited for indirect contempt. Respondent stated that *Intestate Estate* declared in its *fallo* that agents of the Heirs of San Pedro were disallowed from exercising any act of ownership over lands covered by T.P. 4136.

FINDINGS OF THE INVESTIGATING COMMISSIONER

Investigating Commissioner Michael G. Fabunan of the Integrated Bar of the Philippines (IBP) rendered a Report and Recommendation[13] for the dismissal of the Complaint for lack of merit, based on the following grounds: 1) the complaint was patently frivolous, and 2) it was intended to harass respondent. He recommended that the Court issue an order directing complainant Dumanlag to show cause why he should not be cited for indirect contempt.[14]

The IBP Board of Governors passed Resolution No. XXI-2014-418 adopting and approving the Report and Recommendation of the investigating commissioner.[15]

No petition for review has been filed with this Court.

RULING OF THE COURT

The Complaint must be dismissed for utter lack of merit.

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[13] *Id.* at 256-261.

[14] *Id.* at 261.

[15] *Id.* at 256.

A lawyer is charged with the duty to defend "the cause of his client with wholehearted fidelity, care, and devotion."[16] Nevertheless, the Code of Professional Responsibility circumscribes this duty with the limitation that lawyers shall perform their duty to the client within the bounds of law.[17] In this case, Atty. Blanco performed this duty to his client without exceeding the scope of his authority.

As early as 1996, this Court declared in *Intestate Estate* that T.P. 4136 was null and void.[18] In said case, the Heirs of San Pedro claimed ownership of a total land area of approximately 173,000 hectares on the basis of a Spanish title, *Titulo de Propriedad Numero 4136* dated 25 April 1894. The claim covered lands in the provinces of Nueva Ecija, Bulacan, Rizal, Laguna and Quezon, and even cities in Metro Manila such as Quezon City, Caloocan City, Pasay City, City of Pasig and City of Manila.

This Court dubbed the theory of the petitioners therein as "the most fantastic land claim in the history of the Philippines."[19] In discarding the claim, We relied on Presidential Decree No. 892, which abolished the system of registration under the Spanish Mortgage Law and directed all holders of Spanish Titles to cause their lands to be registered under the Land Registration Act within six months from date of effectivity of the law or until 16 August 1976. The Heirs of San Pedro failed to adduce a certificate of title under the Torrens system that would show that T.P. 4136 was brought under the operation of P.D. 892. We therefore declared that the T. P. was null and void, and that no rights could be derived therefrom.

Given the nullity of T.P. 4136, the claim of the Heirs of San Pedro against EMIDCI has no legal basis. On the other hand,

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[16] *Trinidad v. Villarin,* A.C. No. 9310, 27 February 2013, 692 SCRA 1,6 citing *Pangasinan Electric Cooperative v. Montemayor,* 559 Phil. 438 (2007) citing *Natino v. Intermediate Appellate Court,* 247 Phil. 602 (1991).

[17] CPR, Canon 19.

[18] *Supra* note 5.

[19] *Id*.

the records reveal that the Sampaloc property is registered in the name of EMIDCI as TCT 79146 under the Torrens system. As such, the TCT enjoys a conclusive presumption of validity.[20]

Hence, complainant had a baseless claim, which Atty. Blanco correctly resisted. In writing the two letters rejecting complainant's claim, he merely acted in defense of the rights of his client. In doing so, he performed his duty to EMIDCI within the bounds of law.

Consequently, there was no misconduct to speak of on the part of Atty. Blanco. In fact, he should even be commended as he remained steadfast in maintaining the cause of his client even as he was subjected to harassment. As will be discussed below, complainant, in his second demand letter, threatened Atty. Blanco with the filing of a disbarment case.

Complainant maliciously filed the complaint.

As a rule, a complainant should not be penalized for the exercise of the right to litigate.[21] But the rule applies only if the right is exercised in good faith.[22] When a groundless complaint is filed in bad faith, the Court has to step in and penalize the erring complainant.[23]

The policy of insulation from intimidation and harassment encourages lawyers to stay their course and perform their duties without fear.[24] They are better able to function properly and ultimately contributes "to the efficient delivery and proper

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[20] *Ungay Malobago Mines, Inc. v. Republic,* G.R. No. 187892, 14 January 2015.

[21] *Dela Victoria v. Orig-Maloloy-on,* 556 Phil. 653 (2007).

[22] *Id*.

[23] *Id*.

[24] *Seares, Jr. v. Gonzales-Alzate,* A.C. No. 9058, 14 November 2012, 698 Phil. 596-610.

administration of justice."[25] On the other hand, failure to shield lawyers from baseless suits serves "only to disrupt, rather than promote, the orderly administration of justice."[26]

In this case, complainant knew fully well that his complaint was totally unfounded. We note that he acknowledged the existence of Our ruling in *Intestate Estate,* in his second letter to Chung. Complainant unquestionably knew of the nullity of the Spanish title in favor of his principals; yet, he insisted on his unfounded claim by sending a second demand letter to Chung. Complainant even had the audacity to state that *Intestate Estate* excluded the Heirs of San Pedro from the enumeration of persons prohibited from selling lands covered by T.P. 4136. The dispositive portion of the Decision clearly states that the heirs, as well as the agents of the estate of San Pedro, were enjoined from exercising any act of dominion over the lands covered by T.P. 4136. At this juncture, it is appropriate to quote the pertinent portion of the *fallo* of the Decision, which states:

In G.R. No. 106496, judgment is hereby rendered as follows:

x x x x x x x x x

(4) **The heirs, agents, privies and/or anyone acting for and in behalf of the estate of the late Mariano San Pedro y Esteban** are hereby disallowed to exercise any act of possession or ownership or to otherwise, dispose of in any manner the whole or any portion of the estate covered by Titulo de Propriedad No. 4136; and they are hereby ordered to immediately vacate the same, if they or any of them are in possession thereof.

Given the above considerations, the Complaint filed against respondent is nothing but an attempt to intimidate, harass and coerce him into acceding to the demands of complainant. This is the only logical conclusion that can be derived from the filing of a Complaint for Disbarment that is baseless — a fact that complainant was very much aware of.

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[25] *Id.* citing *De Leon v. Castelo,* A.C. No. 8620, 12 January 2011, 639 SCRA 237 *citing* further Cardozo.

[26] *Supra* note 21.

Complainant even admitted during the mandatory conference before the investigating commissioner that he had attached the draft of the administrative complaint against respondent to his second letter to Mr. Chung.[27] Undoubtedly, the attachment of the draft complaint to the letter was meant to intimidate Atty. Blanco. It was a threat should he reject the demand of Dumanlag.

The penalty for filing a malicious complaint varies from censure to a fine as high as ₱5,000.

In *Lim v. Antonio,*[28] the Court censured the complainant who was motivated by revenge and bad faith when he filed an unfounded complaint for disbarment against the respondent lawyer. In *Seares, Jr. v. Gonzales-Alzate,* [29] we likewise censured the complainant for filing a disbarment complaint that was similarly motivated.

For the filing of an unfounded complaint against a clerk of court, the Court issued a stern warning to the complainant lawyer in *Dela Victoria v. Orig-Maloloy-on.*[30] The latter was found to have been in contempt of court and was fined in the amount of ₱2,000.

The Court imposed a stiffer penalty of ₱5,000 on the complainant attorneys in *Prieto v. Corpuz*[31] and *Arnado v. Suarin.*[32] Their complaints against a judge and a court sheriff, respectively, were found to be groundless.

Considering the circumstances present in this case, complainant appears to be devious, persistent and incorrigible, such that mere censure as penalty would not suffice. He has trifled with the Court, using the judicial process as an instrument

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[27] *Rollo,* p. 145.

[28] 210 Phil. 226 (1983).

[29] *Supra* note 24.

[30] *Supra* note 21.

[31] 539 Phil. 65 (2006).

[32] 504 Phil. 657 (2005).

to willfully pursue a nefarious scheme. The imposition of a ₱5,000 fine is appropriate.

***Complainant Defied the Order in* Intestate Estate.**

For making a demand on EMIDCI to recognize the claim of ownership of the Heirs of San Pedro, complainant appears to have disobeyed the order of the Court in *Intestate Estate,* insofar as the Court enjoined agents of the estate from exercising any act of possession or ownership over the lands covered by the T.P. For this reason, the Court finds it appropriate to direct the complainant to show cause why he should not be cited for indirect contempt for failing to comply with the order given in that Decision. Indirect contempt is committed when there is "[d]isobedience of or resistance to a lawful writ, process, order, or judgment of a court."[33]

WHEREFORE, the Court RESOLVES to: (a) **DISMISS** the administrative complaint for disbarment against Atty. Jaime M. Blanco for utter lack of merit; (b) **IMPOSE** a **FINE** of ₱5,000 on complainant Budencio Dumanlag for filing a malicious complaint; and (c) **DIRECT**complainant to **SHOW CAUSE** why he should not be cited for indirect contempt for failing to comply with our final and executory Decision dated 18 December 1996, insofar as it enjoins agents of the Estate of Mariano San Pedro from exercising acts of possession or ownership or to otherwise dispose of any land covered by T. P. 4136.

SO ORDERED.

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

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[33] Rules of Court. Rule 71, Section 3(b).

THIRD DIVISION

[G.R. No. 163494. August 3, 2016]

JESUSA T. DELA CRUZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTIONS OF FACT CANNOT BE REVIEWED THEREIN, FOR THE FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT; EXCEPTIONS.— The petition was filed under Rule 45 of the Rules of Court. The general rule is that petitions for review on *certiorari* filed under this rule shall raise only questions of law that must be distinctly set forth. Questions of fact, which exist when the doubt centers on the truth or falsity of the alleged facts, are not reviewable. Pertinent to this limitation are the petitioner's arguments that delve on *first*, the claim that she was not properly notified of the proceedings before the RTC and, *second*, her alleged non-receipt of a notice of dishonor from Tan. Being questions of fact, the Court, as a rule, finds those unsuitable to review the issues, and instead adheres to the findings already made by the RTC and affirmed by the CA. This is consistent with jurisprudence providing that a trial court's factual findings that are affirmed by the appellate court are generally conclusive and binding upon this Court, for it is not our function to analyze and weigh the parties' evidence all over again except when there is a serious ground to believe a possible miscarriage of justice would thereby result. By jurisprudence, the following instances may however be considered exceptions to the application of the general rule that bar a review of factual findings: (1) when the factual findings of the CA and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3) when the inference made by the CA from the findings of fact is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings,

went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA is premised on misapprehension of facts; (7) when the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.

2. **ID.; ACTIONS; WHEN A PARTY IS REPRESENTED BY A COUNSEL, IT IS NOT THE SERVICE TO THE PARTY THAT SHOULD DETERMINE THE SUFFICIENCY OF NOTICE BECAUSE HE IS REPRESENTED BY COUNSEL UPON WHOM ALL NOTICES SHOULD BE ADDRESSED AND SERVED.—** It is material that the petitioner was represented by counsel during the proceedings with the trial court. Fundamental is the rule that notice to counsel is notice to the client. When a party is represented by a counsel in an action in court, notices of all kinds, including motions and pleadings of all parties and all orders of the court must be served on his counsel. x x x The records support the finding that the petitioner was duly notified of the scheduled hearings. x x x It was not the service to the petitioner that should determine the sufficiency of the notice because she was then represented by counsel, upon whom all court notices should be addressed and served.

3. **ID.; EVIDENCE; PRESENTATION OF EVIDENCE; MOTIONS FOR POSTPONEMENTS BY THE ACCUSED MAY RESULT IN THE WAIVER OF THE RIGHT TO PRESENT EVIDENCE, AFTER IT HAS DETERMINED THAT SHE WAS AFFORDED AMPLE OPPORTUNITY TO PRESENT EVIDENCE IN HER DEFENSE.—** Just as the accused is entitled to a speedy disposition of the case against him or her, the State should not be deprived of its inherent prerogative in prosecuting criminal cases and in seeing to it that justice is served. Thus, parties cannot expect, much less insist, that their pleas for postponement or cancellation of scheduled hearings will be favored by the courts. In the event that their motions are denied, they need to bear the consequences

of the denial. "The strict judicial policy on postponements applies with more force and greater reason to prosecutions involving violations of [B.P. Blg.] 22, whose prompt resolution has been ensured by their being now covered by the *Rule on Summary Procedure*." Thus, in the instant case, the RTC judge could not have allowed the case to continually drag upon the defense's requests. x x x Corollary to this rule on the disposition of motions for postponement during trial is a rule that addresses an accused's waiver of the right to present evidence. By jurisprudence, the Court has affirmed a trial court's ruling that the accused was deemed to have waived her right to present defense evidence following her and counsel's repeated absences. Such waiver was deemed made after it was determined that the accused was afforded ample opportunity to present evidence in her defense but failed to give the case the serious attention it deserved. The Court has after all consistently held that the essence of due process is simply an opportunity to be heard, or an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.

4. CRIMINAL LAW; VIOLATION OF BATAS PAMBANSA BILANG 22; ELEMENTS.— "To be liable for violation of B.P. [Blg.] 22, the following essential elements must be present: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment."

5. ID.; ID.; ID.; NOTICE OF DISHONOR; NOT AN ELEMENT OF THE OFFENSE BUT AN EVIDENCE THAT IT HAS BEEN SENT TO AND RECEIVED BY THE ACCUSED IS ACTUALLY SOUGHT AS A MEANS TO PROVE THE SECOND ELEMENT.— As between the parties to this case, the dispute only pertains to the presence or absence of the second element. In order to support her plea for an acquittal, the petitioner particularly insists that she failed to receive any notice of dishonor on the subject checks, which rendered absent the element of knowledge of insufficient funds. Although a notice

of dishonor is not an indispensable requirement in a prosecution for violation of B.P. Blg. 22 as it is not an element of the offense, evidence that a notice of dishonor has been sent to and received by the accused is actually sought as a means to prove the second element. Jurisprudence is replete with cases that underscore the value of a notice of dishonor in B.P. Blg. 22 cases, and how the absence of sufficient proof of receipt thereof can be fatal in the prosecution's case. In *Yu Oh v. CA*, the Court explained that since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge x x x. Given the circumstances and the manner by which the documents were presented during the trial, the presumption that could lead to evidence of knowledge of insufficient funds failed to arise. x x x The failure of the prosecution to prove the receipt by the petitioner of the requisite written notice of dishonor and that she was given at least five banking days within which to settle her account constitutes sufficient ground for her acquittal.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; QUESTION OF LAW; CONCERNS THE CORRECT APPLICATION OF LAW OR JURISPRUDENCE TO A CERTAIN SET OF FACTS.— The OSG contends that the argument on the petitioner's failure to receive a notice of dishonor could not be raised at this stage. The Court disagrees. While the question may seemingly present a factual issue that is beyond the scope of a petition for review on *certiorari*, it is in essence a question of law as it concerns the correct application of law or jurisprudence to a certain set of facts. It addresses the question of whether or not the service and alleged receipt by the petitioner of the notice of dishonor, as claimed by the prosecution, already satisfies the requirements of the law.

7. CRIMINAL LAW; REVISED PENAL CODE; CIVIL LIABILITY; ACQUITTAL FROM A CRIME DOES NOT NECESSARILY MEAN ABSOLUTION FROM CIVIL LIABILITY.— Notwithstanding the petitioner's acquittal, she remains liable for the payment of civil damages equivalent to the face value of the 23 subject checks, totaling ₱6,226,390.29. In a line of cases, the Court has emphasized that acquittal from a crime does not necessarily mean absolution from civil liability. It was not established that the petitioner had paid the amounts

covered by the checks. The Court has explained that the overpayments that were determined by the CA in another set of B.P. Blg. 22 cases against the petitioner could not be applied to this case. The petitioner failed to present any evidence that would prove the extinguishment of her obligations. Thus, the petitioner should pay Tan the amount of ₱6,226,390.29, plus legal interest at the rate of six percent (6%) *per annum* to be computed from the date of finality of this Decision until full satisfaction thereof.

APPEARANCES OF COUNSEL

Martinez & Mendoza for petitioner.
Office of the Solicitor General for respondent.
Felipe Pacquing, private prosecutor/counsel for Ernesto Tan.

D E C I S I O N

REYES, *J.*:

This resolves the petition for review on *certiorari*[1] filed by Jesusa T. Dela Cruz (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Decision[2] dated November 13, 2003 and Resolution[3] dated May 4, 2004 of the Court of Appeals (CA) in CA-G.R. CR No. 26337. The CA affirmed the Decision[4] rendered by the Regional Trial Court (RTC) of Manila, Branch 2, on August 31, 2001, in Criminal Case No. 89-72064-86, convicting the petitioner for twenty-three (23) counts of violation of Batas Pambansa Bilang 22 (B.P. Blg. 22), otherwise known as the Bouncing Checks Law.

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[1] *Rollo*, pp. 20-41.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Delilah Vidallon-Magtolis and Sergio L. Pestaño concurring; *id*. at 45-54.

[3] *Id*. at 56.

[4] Rendered by Acting Presiding Judge Leonardo P. Reyes; *id*. at 141-168.

The Antecedents

The case stems from a complaint for violation of B.P. Blg. 22 filed by Tan Tiac Chiong, also known as Ernesto Tan (Tan), against the petitioner.[5] Tan entered into several business transactions with the petitioner sometime in 1984 to 1985, whereby Tan supplied and delivered to the petitioner rolls of textile materials worth ₱27,090,641.25. For every delivery made by Tan, the petitioner issued post-dated checks made payable to "Cash". When presented for payment, however, some of the checks issued by the petitioner to Tan were dishonored by the drawee-bank for being "Drawn Against Insufficient Funds" or "Account Closed". The replacement checks later issued by the petitioner were still dishonored upon presentment for payment.[6]

The fourth batch of twenty-three (23) replacement checks issued by the petitioner to Tan became the subject of his complaint. All checks were dated March 30, 1987 and drawn against Family Bank & Trust Co. (FBTC), but were issued for different amounts totaling ₱6,226,390.29,[7] to wit:

Check No.	Amount
078790	₱ 145,905.57
078791	145,905.57
078789	145,905.57
078788	145,905.58
078787	145,905.59
078786	145,905.59
078785	1,354,854.50
078784	337,380.50

[5] Records, Volume I, pp. 107-109.

[6] *Rollo*, pp. 45-46.

[7] Records, Vol. I, pp. 252-274.

078783	309,580.17
078782	411,800.15
078804	874,643.86
078803	129,448.30
078796	282,763.60
078802	129,448.36
078801	129,448.36
078800	129,448.38
078799	129,448.36
078798	129,448.36
078797	282,763.60
078795	282,763.61
078794	145,905.57
078793	145,905.57
078792	145,905.57
	6,226,390.29

The 23 checks were still later dishonored by the drawee-bank FBTC for the reason "Account Closed". Tan informed the petitioner of the checks' dishonor through a demand letter,[8] but the amounts thereof remained unsatisfied.[9]

In March 1989, 23 informations for violation of B.P. Blg. 22 were filed in court against the petitioner. Upon arraignment, the petitioner pleaded "not guilty" to the charges. The cases were consolidated and thereafter, trial on the merits ensued.[10]

The prosecution was able to present its evidence during the trial; it rested its case on June 5, 1995. The defense, however,

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[8] Records, Vol. II, pp. 422-423.

[9] *Rollo*, pp. 46-47.

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

failed to present its evidence after it had sought several hearing postponements and resettings. In view of the petitioner's failure to appear or present evidence on scheduled dates, the RTC issued on July 27, 2000 an Order[11] that deemed the petitioner to have waived her right to present evidence. A copy of the order was received by the petitioner's counsel of record.[12]

Ruling of the RTC

The RTC then decided the case based on available records. On August 31, 2001, the RTC rendered its Decision[13] finding the petitioner guilty of the charges. The dispositive portion of the decision reads:

> WHEREFORE, viewed from all the foregoing, the Court finds [the petitioner] guilty beyond reasonable doubt of violation[s] of [B.P.] Blg. 22 on twenty-three (23) counts, and hereby sentences her to suffer imprisonment of one (1) year in every case, and to indemnify [Tan] the amount equal to the collective face value of all the subject checks, and to pay the costs.
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> SO ORDERED.[14]

Dissatisfied, the petitioner appealed to the CA, arguing, among other grounds, that she was not accorded an ample opportunity to dispute the charges against her. Contrary to the RTC's declaration, the petitioner denied any intention to waive her right to present evidence.[15] In fact, she intended to present a certified public accountant to prove that she had overpayments with Tan, which then extinguished the obligations attached to the checks subject of the criminal cases.[16]

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[11] Records, Vol. III, p. 159.

[12] *Rollo*, pp. 48-49.

[13] *Id*. at 141-168.

[14] *Id*. at 168.

[15] *Id*. at 216-225.

[16] *Id*. at 187-188.

Ruling of the CA

The appeal was dismissed by the CA *via* the Decision[17] dated November 13, 2003, with dispositive portion that reads:

> **WHEREFORE**, the appeal in the above-entitled case is **DISMISSED.** The assailed Decision dated August 31, 2001 in Criminal Case Nos. U-89-72064-86, of the [RTC], Branch 2 of Manila, is **AFFIRMED *in toto*.**
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> SO ORDERED.[18]

The Present Petition

Hence, this petition for review founded on the following grounds:

I.

THE CA GRAVELY ERRED IN RULING THAT THE PETITIONER HAD BEEN ACCORDED AMPLE OPPORTUNITY TO BE HEARD AND TO PRESENT EVIDENCE.

II.

THE CA GRAVELY ERRED IN FAILING TO TAKE INTO CONSIDERATION A PREVIOUS DECISION ISSUED BY ONE OF ITS DIVISIONS.

III.

THE CA GRAVELY ERRED IN RULING THAT THE PETITIONER RECEIVED A NOTICE OF DISHONOR OF THE SUBJECT CHECKS.

IV.

EVEN ASSUMING, WITHOUT CONCEDING, THAT THE PETITIONER IS LIABLE FOR VIOLATION OF B.P. BLG. 22, THE CA GRAVELY ERRED IN NOT APPLYING TO THE PETITIONER THE PROVISIONS OF ADMINISTRATIVE CIRCULAR NUMBERS 12-2000 AND 13-2001.[19]

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

[18] *Id*. at 54.

[19] *Id*. at 25.

The petitioner prays for an acquittal or, in the alternative, a remand of the case to the RTC so that she may be allowed to present evidence for her defense. She also asks the Court to take into consideration the fact that she was acquitted by the CA in another set of B.P. Blg. 22 cases on the ground that she has overpaid Tan.[20] Granting that the Court still declares her guilty of the offense, she asks for an imposition of fine in lieu of the penalty of imprisonment.[21]

In its Comment,[22] respondent People of the Philippines, through the Office of the Solicitor General (OSG), signifies that it was interposing no objection to the petitioner's alternative prayer of a case remand.[23] The OSG agrees that the petitioner was not duly notified of the hearing scheduled on July 27, 2000, to wit:

> Petitioner was not duly notified of the July 27, 2000 hearing because, one, the notice of said hearing was sent to her former address, and, two, the notice was sent on August 3, 2000, that is, one week after the scheduled date of hearing. Thus, petitioner's failure to appear at the July 27, 2000 hearing is justified by the absence of a valid service of notice of hearing to her.
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> Petitioner, who is out on bail on a personal undertaking, having posted a cash bond in lieu of a bail bond, is entitled to personal notice of every scheduled hearing, especially the hearing for her presentation of evidence. There must be clear and convincing proof that she, in fact, received the notice of hearing set on July 27, 2000 in order that the questioned Order of the trial court dated July 27, 2000 may be considered without constitutional infirmity. x x x.[24]

The OSG, nonetheless, argues that the petitioner's acquittal in another CA case failed to render applicable the rule on

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[20] *Id*. at 30.

[21] *Id*. at 39.

[22] *Id*. at 494-508.

[23] *Id*. at 500.

[24] *Id*. at 501-502.

conclusiveness of judgment because there was no identity of subject matter and cause of action between the two sets of cases.[25] As regards the petitioner's alleged failure to receive a notice of dishonor, the OSG maintains that the defense should have been raised at the first instance before the RTC.[26]

Tan filed his own Comment/Opposition,[27] refuting the arguments raised in the petition for review.

Ruling of the Court

The Court finds the petitioner entitled to an acquittal.

Questions of fact under Rule 45

The petition was filed under Rule 45 of the Rules of Court. The general rule is that petitions for review on *certiorari* filed under this rule shall raise only questions of law that must be distinctly set forth. Questions of fact, which exist when the doubt centers on the truth or falsity of the alleged facts, are not reviewable.[28]

Pertinent to this limitation are the petitioner's arguments that delve on *first*, the claim that she was not properly notified of the proceedings before the RTC and, *second*, her alleged non-receipt of a notice of dishonor from Tan. Being questions of fact, the Court, as a rule, finds those unsuitable to review the issues, and instead adheres to the findings already made by the RTC and affirmed by the CA. This is consistent with jurisprudence providing that a trial court's factual findings that are affirmed by the appellate court are generally conclusive and binding upon this Court, for it is not our function to analyze and weigh the parties' evidence all over again except when

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[25] *Id.* at 503-505.

[26] *Id.* at 505-506.

[27] *Id.* at 410-434.

[28] *Uyboco v. People*, G.R. No. 211703, December 10, 2014, 744 SCRA 688, 692, citing *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550, 561 (2004).

there is a serious ground to believe a possible miscarriage of justice would thereby result.[29]

By jurisprudence, the following instances may however be considered exceptions to the application of the general rule that bar a review of factual findings: (1) when the factual findings of the CA and the trial court are contradictory; (2) when the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (3) when the inference made by the CA from the findings of fact is manifestly mistaken, absurd or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the CA is premised on misapprehension of facts; (7) when the CA failed to notice certain relevant facts which, if properly considered, would justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and (10) when the findings of fact of the CA are premised on the absence of evidence but such findings are contradicted by the evidence on record.[30]

Taking into consideration the petitioner's allegations that hinge on the RTC's and CA's alleged errors in their factual findings that could fall under exceptions (2), (3), (6) and (7), and which if considered could materially alter the manner by which the petitioner's guilt was determined, the Court finds it vital to look into these matters.

The petitioner was notified of scheduled hearings

The Court rejects the petitioner's claim that she was not duly notified of scheduled hearing dates by the RTC. It is material

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[29] *Medalla v. Laxa*, 679 Phil. 457, 461 (2012).

[30] *Treñas v. People,* 680 Phil. 368, 378 (2012).

that the petitioner was represented by counsel during the proceedings with the trial court. Fundamental is the rule that notice to counsel is notice to the client. When a party is represented by a counsel in an action in court, notices of all kinds, including motions and pleadings of all parties and all orders of the court must be served on his counsel.[31]

Particularly challenged in the instant case was the RTC's service of the notice for the July 27, 2000 hearing, when the petitioner's and her counsel's absence prompted the trial court to deem a waiver of the presentation of evidence for the defense. While the petitioner, and the OSG in its Comment, referred to a belated sending of notice of hearing to the petitioner's supposedly old address, it appears that her counsel, Atty. Lorenzo B. Leynes, Jr. (Atty. Leynes), was sufficiently notified prior to July 27, 2000.[32]

Cited in the RTC decision was a timely receipt by Atty. Leynes of the notice, a matter which the petitioner failed to sufficiently refute. Even after several postponements and case resettings had been previously sought by the defense, counsel and the petitioner still failed to appear or come prepared during the hearing.[33] The RTC decision narrates the antecedents, to wit:

> On August 24, 1998, the cases were set for reception of defense evidence, but counsel arrived late causing the resetting to September 24, 1998.
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> On November 5, 1998, on motion of the defense, on the ground [that] its witness was not available, the hearing was transferred to November 19, 1998. Due to the unavailability of the public prosecutor, hearing was reset to January 12, 1999.
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> On January 12, 1999, upon urgent motion filed by the defense on the alleged ground [that] defense counsel was suffering from emotional

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[31] *Rosvee C. Celestial v. People of the Philippines*, G.R. No. 214865, August 19, 2015; *People v. Gabriel,* 539 Phil. 252, 256-257 (2006).

[32] *Rollo*, p. 155.

[33] *Id.* at 154-156.

and psychological trauma, hearing was reset to February 9, 1999. Thereafter, hearing was postponed to February 23, 1999. With the commitment of defense counsel, Atty. Jerry D. Bañares, that he will rest his case at the next setting, hearing was reset to March 9, 1999.

On March 9, 1999, Atty. Bañares[,] instead of complying with his commitment, withdrew as counsel. Thereafter, a new counsel, [Atty. Leynes], entered his appearance, and filed an urgent motion for postponement.

On March 15, 1999, [Atty. Leynes,] instead of continuing with the presentation of defense evidence[,] opted to file a motion for voluntary inhibition and postponement. The motion was granted and the cases were re-raffled to Branch 2 on April 26, 1999.

Meanwhile, on March 12, 1999, [Tan] filed a motion for issuance of a writ of preliminary attachment.

On April 20, 1999, [Atty. Leynes] filed a Motion to Declare the Entire Proceedings Null and Void.

On June 9, 1999, the Court, thru Judge Florante A. Cipres, jointly resolved the motions by granting the issuance of a writ of attachment and denying the motion to declare null and void the entire proceedings.

On July 24, 1999, Atty. Bernardo Fernandez entered his appearance as co-counsel, asking that he be served with copies of all the pleadings and other court processes.

After entering his appearance, Atty. Fernandez, on August 4, 1999, filed a Motion for Reconsideration of the Order denying the Motion to Declare Null and Void the Entire Proceedings with [Atty. Leynes] as movant. The motion was denied for lack of merit, with a copy thereof furnished [Atty. Leynes].

On January 25, 2000, reception of defense evidence was set. However, the [petitioner] and her counsel failed to appear compelling Judge Cipres to reset the hearing to March 24, 2000 and to April 6 and 13, 2000 at 8:30 a.m. and to issue a warrant of arrest for the apprehension of [the petitioner].

Unfortunately, Judge Cipres became indisposed and eventually retired. Thus, Judge Rebecca G. Salvador as Pairing Judge of Branch 2, took over.

Accordingly, the hearing for reception of evidence was again reset to July 27, August 17 and 24, 2000.

The Office of [Atty. Leynes] was notified of the hearing dates. Notices were received by one Edwin Gamba and Atty. Virgilio Leynes.

On July 27, 2000, defense counsel and the [petitioner] again failed to appear. Hence, Judge Salvador decreed that "the [petitioner] is considered to have waived presentation of evidence in her defense."

A copy of the Order was furnished the Office of [Atty. Leynes]. Same was received by Atty. Virgilio Leynes.

On September 5, 2000, Atty. Bernardo Fernandez[,] who claimed he did not receive any court [o]rder or process, filed a Motion for Reconsideration setting [the] same to September 8, 2000.

On September 8, 2000, Atty. Fernandez did not appear. Instead, it was Atty. Virgilio Leynes who showed up.

On March 5, 2001, this Court, thru Judge Leonardo P. Reyes, Acting Presiding Judge of Branch 2, denied the Motion for Reconsideration.[34] (Emphasis ours)

These were reiterated in the CA decision, to wit:

After the prosecution rested its case on June 5, 1995, the presentation of the defense's evidence was set but was postponed and reset several times. Notably, the postponements were mostly at the instance of the defense. However, despite due notice and warrant of arrest, the [petitioner] and her counsel failed to appear on the scheduled dates for presentation of the defense's evidence. This prompted the court ***a quo*** to issue an order dated July 27, 2000, considering the [petitioner] to have waived her right to present evidence. Copy of the said order was sent to the Office of [Atty. Leynes] and the same was received by Atty. Virgilio Leynes, Jr., the [petitioner's] counsel of record.[35] (Citations omitted)

The records support the finding that the petitioner was duly notified of the scheduled hearings. Specifically for the July 27, 2000 hearing, notice was received by Atty. Leynes. Minutes

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[34] *Id*.

[35] *Id*. at 48-49.

of the hearing scheduled on May 23, 2000, indicating that the next hearing was reset to July 27, 2000, bore the signature of Atty. Leynes.[36] A notice of hearing dated July 20, 2000 for the July 27, 2000 schedule also indicated receipt for Atty. Leynes by one Edwin Gamba on July 25, 2000.[37] It was not the service to the petitioner that should determine the sufficiency of the notice because she was then represented by counsel, upon whom all court notices should be addressed and served.

The petitioner was deemed to have waived right to present evidence

The petitioner claims that she had sufficient evidence to support her plea for acquittal, but was unduly deprived the right to present such evidence.

The Court has explained the reasons in sustaining the RTC's and CA's declarations that the petitioner was sufficiently apprised of the schedule of hearing dates for the defense's presentation of evidence. Notwithstanding the opportunity given to the defense, hearings were repeatedly postponed at the instance of the petitioner and her counsels.

The question now is whether the trial court committed a reversible error in issuing the Order dated July 27, 2000, by which the petitioner was considered to have waived her right to present evidence in her defense.

The Court answers in the negative.

In *People v. Subida*,[38] the Court reminded judges to be on guard against motions for postponements by the accused which are designed to derail and frustrate the criminal proceedings. Just as the accused is entitled to a speedy disposition of the case against him or her, the State should not be deprived of its inherent prerogative in prosecuting criminal cases and in seeing

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[36] Records, Vol. III, p. 156.

[37] *Id*. at 157.

[38] 526 Phil. 115 (2006).

to it that justice is served.[39] Thus, parties cannot expect, much less insist, that their pleas for postponement or cancellation of scheduled hearings will be favored by the courts. In the event that their motions are denied, they need to bear the consequences of the denial. "The strict judicial policy on postponements applies with more force and greater reason to prosecutions involving violations of [B.P. Blg.] 22, whose prompt resolution has been ensured by their being now covered by the *Rule on Summary Procedure*."[40]

Thus, in the instant case, the RTC judge could not have allowed the case to continually drag upon the defense's requests. In *Paz T. Bernardo, substituted by Heirs, Mapalad G. Bernardo, Emilie B. Ko, Marilou B. Valdez, Edwin T. Bernardo and Gervy B. Santos v. People of the Philippines*,[41] the Court emphasized that the postponement of the trial of a case to allow the presentation of evidence is a matter that lies with the discretion of the trial court; but it is a discretion that must be exercised wisely, considering the peculiar circumstances of each case and with a view to doing substantial justice.[42]

Corollary to this rule on the disposition of motions for postponement during trial is a rule that addresses an accused's waiver of the right to present evidence. By jurisprudence, the Court has affirmed a trial court's ruling that the accused was deemed to have waived her right to present defense evidence following her and counsel's repeated absences. Such waiver was deemed made after it was determined that the accused was afforded ample opportunity to present evidence in her defense but failed to give the case the serious attention it deserved.[43] The Court has after all consistently held that the essence of due process is simply an opportunity to be heard, or an

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[39] *Id*. at 128.

[40] *Sevilla v. Judge Lindo,* 657 Phil. 278, 286 (2011).

[41] G.R. No. 182210, October 5, 2015.

[42] *Id*.

[43] *Id*.

opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[44]

Violation of B.P. Blg. 22

The Court now explains why the petitioner's acquittal is warranted.

The petitioner's acquittal in another set of B.P. Blg. 22 cases fails to exonerate her from the indictment for the 23 subject checks. While the petitioner claims that another division of the CA, specifically the Special Former Fifth Division, acquitted her in CA-G.R. CR No. 13844 for four counts of violation of B.P. Blg. 22 following a finding that the petitioner had overpayments with Tan, it is not established that the overpayments similarly apply to the obligations that are covered by the subject checks. In light of applicable law and prevailing jurisprudence, the conviction of the petitioner is nevertheless reversed.

"To be liable for violation of B.P. [Blg.] 22, the following essential elements must be present: (1) the making, drawing, and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment."[45]

As between the parties to this case, the dispute only pertains to the presence or absence of the second element. In order to support her plea for an acquittal, the petitioner particularly insists that she failed to receive any notice of dishonor on the subject

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[44] *Resurreccion v. People,* G.R. No. 192866, July 9, 2014, 729 SCRA 508, 524.

[45] *Campos v. People,* G.R. No. 187401, September 17, 2014, 735 SCRA 373, 377.

checks, which rendered absent the element of knowledge of insufficient funds.

Although a notice of dishonor is not an indispensable requirement in a prosecution for violation of B.P. Blg. 22 as it is not an element of the offense, evidence that a notice of dishonor has been sent to and received by the accused is actually sought as a means to prove the second element. Jurisprudence is replete with cases that underscore the value of a notice of dishonor in B.P. Blg. 22 cases, and how the absence of sufficient proof of receipt thereof can be fatal in the prosecution's case.

In *Yu Oh v. CA*,[46] the Court explained that since the second element involves a state of mind which is difficult to establish, Section 2 of B.P. Blg. 22 created a *prima facie* presumption of such knowledge, as follows:

> SEC. 2. *Evidence of knowledge of insufficient funds.*—The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

Based on this section, the presumption that the issuer had knowledge of the insufficiency of funds is brought into existence *only after it is proved that the issuer had received a notice of dishonor* and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangement for its payment. The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of non-payment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.[47] (Citations omitted)

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[46] 451 Phil. 380 (2003).

[47] *Id.* at 392-393.

Further, the Court held:

> Indeed, **this requirement [on proof of receipt of notice of dishonor] cannot be taken lightly because Section 2 provides for an opportunity for the drawer to effect full payment of the amount appearing on the check, within five banking days *from notice of dishonor*. The absence of said notice therefore deprives an accused of an opportunity to preclude criminal prosecution. In other words, procedural due process demands that a notice of dishonor be actually served on petitioner.** In the case at bar, appellant has a right to demand and the basic postulate of fairness requires – that the notice of dishonor be actually sent to and received by her to afford her the opportunity to aver prosecution under B.P. Blg. 22.[48] (Citation omitted and emphasis ours)

To support its finding that the petitioner knew of the insufficiency of her funds with the drawee bank, the RTC merely relied on the fact that replacement checks had been issued, in lieu of those that were originally issued to pay for the petitioner's obligation with Tan.[49] The Court finds the conclusion misplaced, considering that the last batch of replacement checks, which eventually became the subject of these cases, were precisely intended to address and preclude any dishonor. Thus, the replacement checks dated March 30, 1987 were purposely drawn against a different checking account with FBTC, different from the old checks that were drawn against another drawee bank.

The prosecution also attempted to prove the petitioner's receipt of a notice of dishonor by referring to a demand letter[50] dated August 8, 1987, along with a registry receipt[51] showing that the letter was sent by registered mail, and the registry return card[52] showing its receipt by a certain Rolando Villanueva on

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[48] *Id*. at 395.

[49] *Rollo*, p. 166.

[50] Records, Vol. II, pp. 422-423.

[51] *Id*. at 424.

[52] *Id*.

August 25, 1987. Given the circumstances and the manner by which the documents were presented during the trial, the presumption that could lead to evidence of knowledge of insufficient funds failed to arise. The Court emphasized in *Alferez v. People, et al.*[53] the manner by which receipt of a notice of dishonor should be established, to wit:

> In *Suarez v. People*, x x x [w]e explained that:
>
> > The presumption arises when it is proved that the issuer had received this notice, and that within five banking days from its receipt, he failed to pay the amount of the check or to make arrangements for its payment. The full payment of the amount appearing in the check within five banking days from notice of dishonor is a complete defense. Accordingly, procedural due process requires that a notice of dishonor be sent to and received by the petitioner to afford the opportunity to aver prosecution under B.P. Blg. 22.
> >
> > x x x. **[I]t is not enough for the prosecution to prove that a notice of dishonor was sent to the petitioner. It is also incumbent upon the prosecution to show "that the drawer of the check received the said notice** because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check.["]
> >
> > A review of the records shows that the prosecution did not prove that the petitioner received the notice of dishonor. **Registry return cards must be authenticated to serve as proof of receipt of letters sent through registered mail.**

In this case, the prosecution merely presented a copy of the demand letter, together with the registry receipt and the return card, allegedly sent to petitioner. However, there was **no attempt to authenticate or identify the signature on the registry return card.** Receipts for registered letters and return receipts do not by themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letter, claimed to be a notice of dishonor. **To be sure, the presentation of the registry card with an unauthenticated signature, does not meet the required proof beyond reasonable**

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[53] 656 Phil. 116 (2011).

doubt that petitioner received such notice. It is not enough for the prosecution to prove that a notice of dishonor was sent to the drawee of the check. The prosecution must also prove actual receipt of said notice, because the fact of service provided for in the law is reckoned from receipt of such notice of dishonor by the drawee of the check. The burden of proving notice rests upon the party asserting its existence. Ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. Blg. 22 cases, there should be clear proof of notice. Moreover, for notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. **From the registry receipt alone, it is possible that petitioner or his authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.** The consistent rule is that penal statutes have to be construed strictly against the State and liberally in favor of the accused. The absence of a notice of dishonor necessarily deprives the accused an opportunity to preclude a criminal prosecution. As there is insufficient proof that petitioner received the notice of dishonor, the presumption that he had knowledge of insufficiency of funds cannot arise.[54] (Citations omitted and emphasis ours)

Similarly, in the instant case, the prosecution failed to sufficiently prove the actual receipt by the petitioner of the demand letter sent by Tan. No witness testified to authenticate the registry return card and the signature appearing thereon. The return card provides that the letter was received by one Rolando Villanueva, without even further proof that the said person was the petitioner's duly authorized agent for the purpose of receiving the correspondence.

The OSG contends that the argument on the petitioner's failure to receive a notice of dishonor could not be raised at this stage. The Court disagrees. While the question may seemingly present a factual issue that is beyond the scope of a petition for review on *certiorari*, it is in essence a question of law as it concerns the correct application of law or jurisprudence to a certain set of facts. It addresses the question of whether or not the service

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[54] *Id.* at 123-125.

and alleged receipt by the petitioner of the notice of dishonor, as claimed by the prosecution, already satisfies the requirements of the law.

Clearly, the prosecution failed to establish the presence of all the elements of violation of B.P. Blg. 22. The petitioner is acquitted from the 23 counts of the offense charged. The failure of the prosecution to prove the receipt by the petitioner of the requisite written notice of dishonor and that she was given at least five banking days within which to settle her account constitutes sufficient ground for her acquittal.[55]

Even the petitioner's waiver of her right to present evidence is immaterial to this ground cited by the Court for her acquittal. The basis relates to the prosecution's own failure to prove all the elements of the offense that could warrant the petitioner's conviction, rather than on an action or argument that should have emanated from the defense. The burden of proving beyond reasonable doubt each element of the crime is upon the prosecution, as its case will rise or fall on the strength of its own evidence. Any doubt shall be resolved in favor of the accused.[56]

Civil liability of the petitioner

Notwithstanding the petitioner's acquittal, she remains liable for the payment of civil damages equivalent to the face value of the 23 subject checks, totaling ₱6,226,390.29. In a line of cases, the Court has emphasized that acquittal from a crime does not necessarily mean absolution from civil liability.[57]

It was not established that the petitioner had paid the amounts covered by the checks. The Court has explained that the

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[55] *Moster v. People,* 569 Phil. 616, 628 (2008).

[56] *Id*.

[57] *Lim v. Mindanao Wines & Liquor Galleria*, 690 Phil. 206, 208 (2012); *Alferez v. People, et al.*, *supra* note 53, at 125; *Moster v. People, id.*

overpayments that were determined by the CA in another set of B.P. Blg. 22 cases against the petitioner could not be applied to this case. The petitioner failed to present any evidence that would prove the extinguishment of her obligations. Thus, the petitioner should pay Tan the amount of ₱6,226,390.29, plus legal interest at the rate of six percent (6%) *per annum* to be computed from the date of finality of this Decision until full satisfaction thereof.

WHEREFORE, the Decision dated November 13, 2003 and Resolution dated May 4, 2004 of the Court of Appeals in CA-G.R. CR No. 26337 are **REVERSED** and **SET ASIDE**. Petitioner Jesusa T. Dela Cruz is **ACQUITTED** of the crime of violation of Batas Pambansa Bilang 22 on twenty-three (23) counts on the ground that her guilt was not established beyond reasonable doubt. She is, nonetheless, ordered to pay complainant Tan Tiac Chiong, also known as Ernesto Tan, the face value of the subject checks totaling Six Million Two Hundred Twenty-Six Thousand Three Hundred Ninety Pesos and 29/100 (₱6,226,390.29), with interest of six percent (6%) *per annum* from the date of finality of this Decision until full payment.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 167082. August 3, 2016]

TERESITA I. BUENAVENTURA, *petitioner, vs.* **METROPOLITAN BANK AND TRUST COMPANY,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT OF ADHESION; THE INTERPRETATION THEREOF ALIGNS WITH THE LITERAL MEANING OF ITS TERMS AND CONDITIONS ABSENT ANY AMBIGUITY, OR WITH THE INTENTION OF THE PARTIES.— What the petitioner advocates is for the Court to now read into the promissory notes terms and conditions that would contradict their clear and unambiguous terms in the guise of such promissory notes being contracts of adhesion. This cannot be permitted, for, even assuming that the promissory notes were contracts of adhesion, such circumstance alone did not necessarily entitle her to bar their literal enforcement against her if their terms were unequivocal. It is preposterous on her part to disparage the promissory notes for being contracts of adhesion, for she thereby seems to forget that the validity and enforceability of contracts of adhesion were the same as those of other valid contracts. x x x As a rule, indeed, the contract of adhesion is no different from any other contract. Its interpretation still aligns with the literal meaning of its terms and conditions absent any ambiguity, or with the intention of the parties. The terms and conditions of the promissory notes involved herein, being clear and beyond doubt, should then be enforced accordingly. x x x [N]o court, even this Court, can "make new contracts for the parties or ignore those already made by them, simply to avoid seeming hardships. Neither abstract justice nor the rule of liberal construction justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract of an obligation not assumed."

2. ID.; ID.; ID.; SIMULATED CONTRACTS; KINDS.— Based on Article 1345 of the *Civil Code*, simulation of contracts is of two kinds, namely: (1) absolute; and (2) relative. Simulation is absolute when there is color of contract but without any substance, the parties not intending to be bound thereby. It is relative when the parties come to an agreement that they hide or conceal in the guise of another contract. The effects of simulated contracts are dealt with in Article 1346 of the *Civil Code* x x x.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED BELOW SHOULD NOT BE RAISED FOR

THE FIRST TIME ON APPEAL FOR BASIC CONSIDERATIONS OF DUE PROCESS AND FAIRNESS.— [T]he issue of simulation of contract was not brought up in the RTC. It was raised for the first time only in the CA. Such belatedness forbids the consideration of simulation of contracts as an issue. Indeed, the appellate courts, including this Court, should adhere to the rule that issues not raised below should not be raised for the first time on appeal. Basic considerations of due process and fairness impel this adherence, for it would be violative of the right to be heard as well as unfair to the parties and to the administration of justice if the points of law, theories, issues and arguments not brought to the attention of the lower courts should be considered and passed upon by the reviewing courts for the first time.

4. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; CONTRACT OF GUARANTY; MUST BE EXPRESS AND IN WRITING TO BE ENFORCEABLE, ESPECIALLY AS IT IS CONSIDERED A SPECIAL PROMISE TO ANSWER FOR THE DEBT, DEFAULT OR MISCARRIAGE OF ANOTHER.—** A contract of guaranty is one where a person, the guarantor, binds himself or herself to another, the creditor, to fulfill the obligation of the principal debtor in case of failure of the latter to do so. It cannot be presumed, but must be express and in writing to be enforceable, especially as it is considered a special promise to answer for the debt, default or miscarriage of another. It being clear that the promissory notes were entirely silent about the supposed guaranty in favor of Imperial, we must read the promissory notes literally due to the absence of any ambiguities about their language and meaning. In other words, the petitioner could not validly insist on the guaranty. In addition, the disclosure statements and the statements of loan release undeniably identified her, and no other, as the borrower in the transactions. Under such established circumstances, she was directly and personally liable for the obligations under the promissory notes.

5. **ID.; ID.; ID.; MUTUALITY AND OBLIGATORY FORCE OF CONTRACTS; CONTRACTS SHOULD BIND BOTH CONTRACTING PARTIES, AND THE VALIDITY OR COMPLIANCE THEREWITH SHOULD NOT BE LEFT TO THE WILL OF ONE PARTY.—** After having determined that the terms and conditions of the promissory notes were clear

and unambiguous, and thus should be given their literal meaning and not be interpreted differently, we insist and hold that she should be bound by such terms and conditions. Verily, the promissory notes as contracts should bind both contracting parties; hence, the validity or compliance therewith should not be left to the will of the petitioner. Otherwise, she would contravene and violate the principles of mutuality and of the obligatory force of contracts.

6. **ID.; ID.; ID.; INTERESTS; THE RATE OF INTEREST FOR LOAN OR FORBEARANCE OF MONEY PROVIDED BY THE MONETARY BOARD OF THE BANGKO SENTRAL NG PILIPINAS APPLIES ONLY IN THE ABSENCE OF STIPULATIONS IN LOAN CONTRACTS.—** On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas, in the exercise of its statutory authority to review and fix interest rates, issued Circular No. 799, Series of 2013 to lower to 6% *per annum* the rate of interest for loan or forbearance of any money, goods or credits, and the rate allowed in judgment. The revised rate applies only in the absence of stipulation in loan contracts. Hence, the contractual stipulations on the rates of interest contained in the promissory notes remained applicable. x x x To accord with the prevailing jurisprudence, the Court pronounces that the respondent was entitled to recover the principal amount of ₱1,500,000.00 subject to the stipulated interest of 14.239% *per annum* from date of default until full payment; and the principal amount of ₱1,200,000.00 subject to the stipulated interest of 17.532% *per annum* from date of default until full payment.

7. **ID.; ID.; ID.; DELAY OR DEFAULT; INCURRED FROM THE TIME THE OBLIGEE JUDICIALLY OR EXTRAJUDICIALLY DEMANDS FROM THE OBLIGOR THE FULFILLMENT OF HIS OBLIGATIONS.—** According to Article 1169 of the *Civil Code*, there is delay or default from the time the obligee judicially or extrajudicially demands from the obligor the fulfillment of his or her obligation. The records reveal that the respondent did not establish *when* the petitioner defaulted in her obligation to pay based on the two promissory notes. As such, its claim for payment computed from July 15, 1998 until full payment of the obligation had no moorings other than July 15, 1998 being the date reflected in the *statements of past due interest and penalty charges as of July 15, 1998.*

Nonetheless, its counsel, through the letter dated July 7, 1998, made a *final demand* in writing for the petitioner to settle her total obligation within five days from receipt. As the registry return receipt indicated, the final demand letter was received for the petitioner by one Elisa dela Cruz on July 28, 1998. Hence, the petitioner had five days from such receipt, or until August 2, 1998, within which to comply. The reckoning date of default is, therefore, August 3, 1998.

8. **ID.; ID.; ID.; OBLIGATIONS WITH A PENAL CLAUSE; A PENAL CLAUSE IS A SUBSTITUTE INDEMNITY FOR DAMAGES AND THE PAYMENT OF INTERESTS IN CASE OF NONCOMPLIANCE, UNLESS THERE IS A STIPULATION TO THE CONTRARY.—** As to the penalty charge, the same was warranted for being expressly stipulated in the promissory notes x x x. [A] penal clause is an accessory undertaking attached to a principal obligation. It has for its purposes, *firstly,* to provide for liquidated damages; and, *secondly,* to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach of obligation. Under Article 1226 of the *Civil Code*, a penal clause is a substitute indemnity for damages and the payment of interests in case of noncompliance, *unless there is a stipulation to the contrary*. In *Tan v. Court of Appeals*, the Court has elaborated on the nature of a penalty clause x x x. To accord with the foregoing rulings, the 17.532% and 14.239% annual interest rates shall also respectively earn a penalty charge of 18% *per annum* reckoned on the unpaid principals computed from the date of default (August 3, 1998) until fully paid. This is in line with the express agreement between the parties to impose such penalty charge.

9. **ID.; ID.; ID.; INTERESTS; THE INTEREST DUE SHALL ITSELF EARN LEGAL INTEREST OF 6% *PER ANNUM* FROM THE DATE OF FINALITY OF THE JUDGMENT UNTIL ITS FULL SATISFACTION.—** Article 2212 of the *Civil Code* requires that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. Accordingly, the interest due shall itself earn legal interest of 6% *per annum* from the date of finality of the judgment until its full satisfaction, the interim period being deemed to be an equivalent to a forbearance of credit.

APPEARANCES OF COUNSEL

Tan Acut & Lopez for petitioner.
Santiago, Corpuz & Ejercito Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A duly executed contract is the law between the parties, and, as such, commands them to comply fully and not selectively with its terms. A contract of adhesion, of itself, does not exempt the parties from compliance with what was mutually agreed upon by them.

The Case

In this appeal, the petitioner seeks the reversal of the decision promulgated on April 23, 2004,[1] whereby the Court of Appeals (CA) affirmed with modification the judgment[2] rendered on July 11, 2002 by the Regional Trial Court (RTC), Branch 61, in Makati City. Also being appealed is the resolution[3] promulgated on February 9, 2005, whereby the CA denied her motion for reconsideration.

Antecedents

The following factual and procedural antecedents are narrated by the CA in its assailed decision, to wit:

On January 20, 1997 and April 17, 1997, Teresita Buenaventura (or "appellant") executed Promissory Note (or "PN") Nos. 232663 and 232711, respectively, each in the amount of ₱1,500,000.00 and payable to Metropolitan Bank and Trust Company (or "appellee").

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[1] *Rollo*, pp. 174-182; penned by Associate Justice Edgardo P. Cruz (retired), with the concurrence of Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Noel G. Tijam.

[2] CA *rollo,* pp. 62-69; penned by Judge Marissa Macaraig-Guillen.

[3] *Rollo,* p. 193.

PN No. 232663 was to mature on July 1, 1997, with interest and credit evaluation and supervision fee (or "CESF") at the rate of 17.532% per annum, while PN No. 232711 was to mature on April 7, 1998, with interest and CESF at the rate of 14.239% per annum. Both PNs provide for penalty of 18% per annum on the unpaid principal from date of default until full payment of the obligation.

Despite demands, there remained unpaid on PN Nos. 232663 and 232711 the amounts of ₱2,061,208.08 and ₱1,492,236.37, respectively, as of July 15, 1998, inclusive of interest and penalty. Consequently, appellee filed an action against appellant for recovery of said amounts, interest, penalty and attorney's fees before the Regional Trial Court of Makati City (Branch 61).

In answer, appellant averred that in 1997, she received from her nephew, Rene Imperial (Or "Imperial"), three postdated checks drawn against appellee (Tabaco Branch), i.e., Check No. TA 1270484889PA dated January 5, 1998 in the amount of ₱1,200,000.00, Check No. 1270482455PA dated March 31, 1998 in the amount of ₱1,197,000.00 and Check No. TA1270482451PA dated March 31, 1998 in the amount of ₱500,000.00 (or "subject checks"), as partial payments for the purchase of her properties; that she rediscounted the subject checks with appellee (Timog Branch), for which she was required to execute the PNs to secure payment thereof; and that she is a mere guarantor and cannot be compelled to pay unless and until appellee shall have exhausted all the properties of Imperial.[4]

On July 11, 2002, the RTC rendered its judgment,[5] *viz.*:

WHEREFORE, in view of the foregoing, the Court finds in favor of plaintiff METROPOLITAN BANK AND TRUST COMPANY and against defendant TERESITA BUENAVENTURA.

As a consequence of this judgment, defendant Buenaventura is directed to pay plaintiff bank the amount of ₱3,553,444.45 plus all interest and penalties due as stipulated in Promissory Notes Nos. 232663 and 232711 beginning July 15, 1998 until the amount is fully paid and 10% of the total amount due as attorney's fees.

SO ORDERED.

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

[5] CA *rollo,* p. 69.

Dissatisfied, the petitioner appealed, assigning the following as errors, namely:

I

THE TRIAL COURT ERRED IN HOLDING THAT THE REDISCOUNTING TRANSACTION BETWEEN APPELLANT AND METROBANK RESULTED TO A LOAN OBLIGATION SECURED BY THE SUBJECT CHECKS AND PROMISSORY NOTES.

A. Rediscounting transactions do not create loan obligations between the parties.

B. By the rediscounting, Metrobank subrogated appellant as creditor of Rene Imperial, the issuer of the checks.

C. Legal subrogation was presumed when Metrobank paid the obligation of Mr. Imperial with the latter's knowledge and consent.

II

THE TRIAL COURT ERRED IN GRANTING METROBANK'S CLAIMS ON THE BASIS OF THE PROMISSORY NOTES.

A. The promissory notes are null and void for being simulated and fictitious.

B. Assuming that the promissory notes are valid, these only serve as guaranty to secure the payment of the rediscounted checks.

III

THE TRIAL COURT ERRED IN NOT RULING THAT APPELLANT IS ENTITLED TO HER COUNTERCLAIMS FOR EXEMPLARY DAMAGES, ATTTORNEY'S FEES, LITIGATION EXPENSES AND COSTS OF SUIT.[6]

On April 23, 2004, the CA promulgated the assailed decision affirming the decision of the RTC with modification,[7] as follows:

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

[7] *Supra* note 1.

WHEREFORE, the appealed decision is **AFFIRMED** with **MODIFICATION** of the second paragraph of its dispositive portion, which should now read:

> "As a consequence of this judgment, defendant Buenaventura is directed to pay plaintiff bank the amount of ₱3,553,444.45 plus interest and penalty therein at 14.239% per annum and 18% per annum, respectively, from July 15, 1998 until fully paid and 10% of said amount as attorney's fees."

SO ORDERED.[8]

On May 21, 2004, the petitioner moved for the reconsideration of the decision, but the CA denied her motion for that purpose on February 9, 2005.[9]

Hence, this appeal by the petitioner.

Issues

The petitioner ascribes the following errors to the CA, to wit:

I

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS LIABLE UNDER THE PROMISSORY NOTES.

A. The promissory notes executed by petitioner are null and void for being simulated and fictitious.

B. Even assuming that the promissory notes are valid, these are intended as mere guaranty to secure Rene Imperial's payment of the rediscounted checks. Hence, being a mere guarantor, the action against petitioner under the said promissory notes is premature.

C. Metrobank is deemed to have subrogated petitioner as creditor of Mr. Imperial (the issuer of the checks). Hence, Metrobank's recourse as creditor, is against Mr. Imperial.

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[8] *Id*. at 181.

[9] CA *rollo,* p. 194.

II

THE COURT OF APPEALS ERRED IN NOT RULING THAT PETITIONER IS ENTITLED TO HER COUNTER-CLAIM FOR EXEMPLARY DAMAGES, ATTORNEY'S FEES, LITIGATION EXPENSES AND COSTS OF SUIT.[10]

Ruling

The appeal lacks merit.

First of all, the petitioner claims that the promissory notes she executed were contracts of adhesion because her only participation in their execution was affixing her signature;[11] and that the terms of the promissory notes should consequently be strictly construed against the respondent as the party responsible for their preparation.[12] In contrast, the respondent counters that the terms and conditions of the promissory notes were clear and unambiguous; hence, there was no room or need for interpretation thereof.[13]

The respondent is correct.

The promissory notes were written as follows:

> FOR VALUE RECEIVED, I/we jointly and severally promise to pay Metropolitan Bank and Trust Company, at its office x x x the principal sum of PESOS x x x, Philippine currency, together with interest and credit evaluation and supervision fee (CESF) thereon at the effective rate of x x x per centum x x x per annum, inclusive, from date hereof and until fully paid.[14]

What the petitioner advocates is for the Court to now read into the promissory notes terms and conditions that would contradict their clear and unambiguous terms in the guise of

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[10] *Rollo,* pp. 13-14.

[11] *Id*. at 16.

[12] *Id*. at 17.

[13] *Id*. at 211-212.

[14] *Id*. at 37.

such promissory notes being contracts of adhesion. This cannot be permitted, for, even assuming that the promissory notes were contracts of adhesion, such circumstance alone did not necessarily entitle her to bar their literal enforcement against her if their terms were unequivocal. It is preposterous on her part to disparage the promissory notes for being contracts of adhesion, for she thereby seems to forget that the validity and enforceability of contracts of adhesion were the same as those of other valid contracts. The Court has made this plain in *Avon Cosmetics, Inc. v. Luna*,[15] stating:

> A contract of adhesion is so-called because its terms are prepared by only one party while the other party merely affixes his signature signifying his adhesion thereto. Such contract is just as binding as ordinary contracts.
>
> It is true that we have, on occasion, struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant bargaining party and is reduced to the alternative of taking it or leaving it, completely deprived of the opportunity to bargain on equal footing. Nevertheless, contracts of adhesion are not invalid *per se* and they are not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely, if he adheres, he gives his consent.
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> x x x x x x x x x
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> Accordingly, a contract duly executed is the law between the parties, and they are obliged to comply fully and not selectively with its terms. A contract of adhesion is no exception.

As a rule, indeed, the contract of adhesion is no different from any other contract. Its interpretation still aligns with the literal meaning of its terms and conditions absent any ambiguity, or with the intention of the parties.[16] The terms and

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[15] G.R. No. 153674, December 20, 2006, 511 SCRA 376, 396-397.

[16] The *Civil Code* says:

> Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.

conditions of the promissory notes involved herein, being clear and beyond doubt, should then be enforced accordingly. In this regard, we approve of the observation by the CA, citing *Cruz v. Court of Appeals*,[17] that the intention of the parties should be "deciphered not from the unilateral *post facto* assertions of one of the parties, but from the language used in the contract."[18] As fittingly declared in *The Insular Life Assurance Company, Ltd. vs. Court of Appeals and Sun Brothers & Company*,[19] "[w]hen the language of the contract is explicit leaving no doubt as to the intention of the drafters thereof, the courts may not read into it any other intention that would contradict its plain import." Accordingly, no court, even this Court, can "make new contracts for the parties or ignore those already made by them, simply to avoid seeming hardships. Neither abstract justice nor the rule of liberal construction justifies the creation of a contract for the parties which they did not make themselves or the imposition upon one party to a contract of an obligation not assumed."[20]

Secondly, the petitioner submits that the promissory notes were null and void for being simulated and fictitious; hence, the CA erred in enforcing them against her.

The submission contradicts the records and the law pertinent to simulated contracts.

Based on Article 1345[21] of the *Civil Code*, simulation of contracts is of two kinds, namely: (1) absolute; and (2) relative. Simulation is absolute when there is color of contract but without

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If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

[17] G.R. No. 126713, July 27, 1998, 293 SCRA 239, 252.

[18] *Rollo*, p. 177.

[19] G.R. No. 126850, April 28, 2004, 428 SCRA 79, 92.

[20] *Id*.

[21] Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

any substance, the parties not intending to be bound thereby.[22] It is relative when the parties come to an agreement that they hide or conceal in the guise of another contract.[23]

The effects of simulated contracts are dealt with in Article 1346 of the *Civil Code*, to wit:

> Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

The burden of showing that a contract is simulated rests on the party impugning the contract. This is because of the presumed validity of the contract that has been duly executed.[24] The proof required to overcome the presumption of validity must be convincing and preponderant. Without such proof, therefore, the petitioner's allegation that she had been made to believe that the promissory notes would be guaranties for the rediscounted checks, not evidence of her primary and direct liability under loan agreements,[25] could not stand.

Moreover, the issue of simulation of contract was not brought up in the RTC. It was raised for the first time only in the CA.[26] Such belatedness forbids the consideration of simulation of contracts as an issue. Indeed, the appellate courts, including this Court, should adhere to the rule that issues not raised below should not be raised for the first time on appeal. Basic considerations of due process and fairness impel this adherence, for it would be violative of the right to be heard as well as unfair to the parties and to the administration of justice if the points of law, theories, issues and arguments not brought to

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[22] IV Tolentino, *Civil Code of the Philippines,* 1991, p. 516.

[23] *Id*.

[24] *Ramos v. Heirs of Honorio Ramos, Sr.*, G.R. No. 140848, April 25, 2002, 381 SCRA 594, 602.

[25] *Rollo,* p. 18.

[26] CA *rollo,* pp. 44-55.

the attention of the lower courts should be considered and passed upon by the reviewing courts for the first time.

Thirdly, the petitioner insists that the promissory notes, even if valid, were meant as guaranties to secure payment of the checks by the issuer, Rene Imperial; hence, her liability was that of a guarantor, and would take effect only upon exhaustion of all properties and after resort to all legal remedies against Imperial.[27]

The insistence of the petitioner is bereft of merit.

The CA rejected this insistence, expounding as follows:

> A guaranty is not presumed; it must be expressed (Art. 2055, New Civil Code). The PNs provide, in clear language, that appellant is primarily liable thereunder. On the other hand, said PNs do not state that Imperial, who is not even privy thereto, is the one primarily liable and that appellant is merely a guarantor. Parenthetically, the disclosure statement (Exh. "D") executed by appellant states that PN No. 232711 is "secured by postdated checks." In other words, it does not appear that the PNs were executed as guaranty for the payment of the subject checks.
>
> Nevertheless, appellant insists that she did not obtain a short-term loan from appellee but rediscounted the subject checks, with the PNs as guaranty. The contention is untenable.
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> In *Great Asian Sales Center Corporation vs. Court of Appeals* (381 SCRA 557), which was cited in support of appellant's claim, the Supreme Court explained the meaning of "discounting line," thus:
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> > "In the financing industry, the term 'discounting line' means a credit facility with a financing company or bank which allows a business entity to sell, on a continuing basis, its accounts receivable at a discount. The term 'discount' means the sale of a receivable at less than its face value. The purpose of a discounting line is to enable a business entity to generate instant cash out of its receivables which are still to mature at future dates. The financing company or bank which buys the receivables makes its profit out of the difference between the face value of the receivable and the discounted price."

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[27] *Rollo*, pp. 22-24.

A guarantor may bind himself for less, but not for more than the principal debtor, both as regards the amount and the onerous nature of the conditions (Art. 2054, *id.*). Curiously, the face amounts of the PNs (totaling ₱3,000,000.00) are more than those of the subject checks (totaling ₱2,897,000.00). And unlike the subject checks, the PNs provide for interest, CESF and penalty.

Moreover, the maturity date (July 1, 1997) of PN No. 232663 is ahead of the dates (January 5, 1998 and March 31, 1998) of the subject checks. In other words, appellant, as "guarantor", was supposed to make good her "guaranty", i.e. PNs in question, even *before* the "principal" obligations, i.e. subject checks, became due. It is also noted that the rediscounting of the subject checks (in January 1997) occurred months *ahead* of the execution of PN No. 232711 (on April 17, 1997) even as the PNs were supposedly a precondition to said rediscounting.

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Stated differently, appellant is primarily liable under the subject checks. She is a principal debtor and not a guarantor. Consequently, the benefit of excussion may not be interposed as a defense in an action to enforce appellant's warranty as indorser of the subject checks.

Moreover, it is absurd that appellant (as maker of the PNs) may act as guarantor of her own obligations (as indorser of the subject checks). Thus, Art. 2047 of the New Civil Code provides that "(b)y guaranty, a person called the **guarantor**, binds himself to the creditor to fulfill the obligation of the **principal debtor** in case the latter should fail to do so."[28] (Emphasis supplied)

The CA was correct. A contract of guaranty is one where a person, the guarantor, binds himself or herself to another, the creditor, to fulfill the obligation of the principal debtor in case of failure of the latter to do so.[29] It cannot be presumed,

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[28] *Rollo*, pp. 177-180.

[29] Art. 2047, *Civil Code*, provides:

Art. 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.

If a person binds himself solidarily with the principal debtor, the provisions of Section 4, Chapter 3, Title I of this Book shall be observed. In such case the contract is called a suretyship. (1822a)

but must be express and in writing to be enforceable,[30] especially as it is considered a special promise to answer for the debt, default or miscarriage of another.[31] It being clear that the promissory notes were entirely silent about the supposed guaranty in favor of Imperial, we must read the promissory notes literally due to the absence of any ambiguities about their language and meaning. In other words, the petitioner could not validly insist on the guaranty. In addition, the disclosure statements[32] and the statements of loan release[33] undeniably identified her, and no other, as the borrower in the transactions. Under such established circumstances, she was directly and personally liable for the obligations under the promissory notes.

Fourth, the petitioner argues that the respondent was immediately subrogated as the creditor of the accounts by its purchase of the checks from her through its rediscounting facility;[34] and that legal subrogation should be presumed because the petitioner, a third person not interested in the obligation, paid the debt with the express or tacit approval of the debtor.[35]

The argument is barren of factual and legal support.

Legal subrogration finds no application because there is no evidence showing that Imperial, the issuer of the checks, had consented to the subrogation, expressly or impliedly.[36] This

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[30] Art. 2055, *Civil Code*, declares that: "A guaranty is not presumed; it must be express and cannot extend to more than what is stipulated therein."

[31] Art. 1403, *Civil Code*, requires that **a special promise to answer for the debt, default or miscarriage of another**, among others, must be in writing to be enforceable unless ratified; see also *Aglibot v. Santia*, G.R. No. 185945, December 5, 2012, 687 SCRA 283, 294-295.

[32] *Rollo*, pp. 38, 40.

[33] *Records,* pp. 126-127.

[34] *Rollo*, p. 26.

[35] *Id*. at 27.

[36] According to Art. 1302, *Civil Code*, there is legal subrogation when: (1) a creditor pays another creditor who is preferred, even without the debtor's knowledge; (2) **a third person, not interested in the obligation, pays**

circumstance was pointed out by the RTC itself.[37] Also, as the CA emphatically observed,[38] the argument was off-tangent because the suit was not for the recovery of money by virtue of the checks of Imperial but for the enforcement of her obligation as the maker of the promissory notes.

Fifth, the petitioner posits that she was made to believe by the manager of the respondent's Timog Avenue, Quezon City Branch that the promissory notes would be mere guaranties for the rediscounted checks;[39] that despite the finding of the RTC and the CA that she was a seasoned businesswoman presumed to have read and understood all the documents given to her for signature, she remained a layman faced with and puzzled by complex banking terms; and that her acceding to signing the promissory notes should not be taken against her as to conclude her.[40]

The petitioner's position is unworthy of serious consideration.

After having determined that the terms and conditions of the promissory notes were clear and unambiguous, and thus should be given their literal meaning and not be interpreted differently, we insist and hold that she should be bound by such terms and conditions. Verily, the promissory notes as contracts should bind both contracting parties; hence, the validity or compliance therewith should not be left to the will of the petitioner.[41] Otherwise, she would contravene and violate the principles of mutuality and of the obligatory force of contracts. A respected commentator on civil law has written in this respect:

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with the express or tacit approval of the debtor; or (3) even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.

[37] *Rollo*, p. 65.

[38] *Id*. at 180.

[39] *Id*. at 18.

[40] *Id*. at 20.

[41] Art. 1308, *Civil Code*.

The binding effect of the contract on both parties is based on the principles (1) that obligations arising from contracts have the force of law between the contracting parties; and (2) that there must be mutuality between the parties based on their essential equality, to which is repugnant to have one party bound by the contract leaving the other free therefrom.

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Just as nobody can be forced to enter into a contract, in the same manner once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.

If, after a perfect and binding contract has been executed between the parties, it occurs to one of them to allege some defect therein as a reason for annulling it, the alleged defect must be conclusively proven, since the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties. The fact that a party may not have fully understood the legal effect of the contract is no ground for setting it aside.[42]

And, lastly, there is need to revise the monetary awards by the CA. Although no issue is raised by the petitioner concerning the monetary awards, the Court feels bound to make this revision as a matter of law in order to arrive at a just resolution of the controversy.

Involved here are two loans of the petitioner from the respondent, specifically: (1) the principal amount of ₱1,500,000.00 covered by Promissory Note No. 232663 to be paid on or before July 1, 1997 with interest and credit evaluation and supervision fee (CESF) at the rate of 17.532% *per annum* and penalty charge of 18% *per annum* based on the unpaid principal to be computed from the date of default until full payment of the obligation; and (2) the principal amount of ₱1,500,000.00 covered by Promissory Note No. 232711 to be paid on or before April 7, 1998 with interest and CESF at the

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[42] IV Tolentino, *op. cit.,* at 424-425.

rate of 14.239% *per annum* and penalty charge of 18% *per annum* based on the unpaid principal to be computed from the date of default until full payment of the obligation.

The RTC adjudged the petitioner liable to pay to the respondent the total of ₱3,553,444.45 representing her outstanding obligation, including accrued interests and penalty charges under the promissory notes, plus attorney's fees.[43] On appeal, the CA ruled that she was liable to the respondent for the sum of ₱3,553,444.45 with interest and penalties at 14.239% *per annum* and 18% *per annum*, respectively, from July 15, 1998 until fully paid.[44]

The bases of the amounts being claimed from the petitioner were apparently the two *statements of past due interest and penalty charges as of July 15, 1998*, one corresponding to Promissory Note No. 232711,[45] and the other to Promissory Note No. 232663.[46] Respondent's witness Patrick N. Miranda, testifying on the obligation and the computation thereof,[47] attested as follows:

1. What is the amount of her loan obligation?

-Under Promissory Note No. 232663, her loan obligation is ₱1,492,236.37 inclusive of interest and penalty charges as of July 15, 1998. Under Promissory Note No. 232711, her loan obligation is ₱2,061,208.08, inclusive of interest and penalty charges as of July 15, 1998. Thus, the total is ₱3,553,444.45 as of July 15, 1998. Two (2) Statements of Account were prepared to show the computation and penalty charges.

2. Do you have these Statements of Account?

-Yes, sir. (Copies are hereto attached as *Exhibits "H"* and *"I."*)[48]

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[43] *Rollo,* p. 67.

[44] *Id.* at 181.

[45] *Record,* p. 104.

[46] *Id.* at 105.

[47] *Id.* at 95.

[48] *Id.* at 96.

The two *statements of past due interest and penalty charges as of July 15, 1998* explained how the respondent had arrived at the petitioner's outstanding liabilities as of July 15, 1998, thusly:

Promissory Note No. 232711[49]

PRINCIPAL AMOUNT	₱ 1,500,000.00
PAST DUE INTEREST – 334 days @34.991% fr. Aug. 15, 1997 to July 15, 1998	₱ 486,958.08
PENALTY CHARGES – 99 days @18.0% fr. April 07, 1998 to July 15, 1998	₱ 74,250.00
TOTAL OUTSTANDING LOAN AS OF JULY 15, 1998	**₱ 2,061,208.08**

Promissory Note No. 232663[50]

PRINCIPAL AMOUNT	₱ 1,200,000.00
PAST DUE INTEREST – 191 days @27.901% fr. [J]an. 05, 1998 to [J]uly 15, 1998	₱ 177,636.37
PENALTY CHARGES – 191 days @18.0% fr. [J]an. 05, 1998 to [J]uly 15, 1998	₱ 114,600.00
TOTAL OUTSTANDING LOAN AS OF JULY 15, 1998	**₱ 1,492,236.37**

The total of ₱3,553,444.45 was the final sum of the computations contained in the *statements of past due interest and penalty charges as of July 15, 1998*, and was inclusive of interest at the rate of 34.991% (on the principal of ₱1,500,000.00) and 27.901% (on the principal of ₱1,200,000.00). Yet, such interest rates were different from the interest rates stipulated in the promissory notes, namely: 14.239% for Promissory Note

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[49] *Supra* note 44.

[50] *Id*. at 105.

No. 232711 and 17.532% for Promissory Note No. 232663. As a result, the ₱3,553,444.45 claimed by the respondent as the petitioner's aggregate outstanding loan obligation included interests of almost double the rates stipulated by the parties.

We hold that the respondent had no legal basis for imposing rates far higher than those agreed upon and stipulated in the promissory notes. It did not suitably justify the imposition of the increased rates of 34.991% and 27.901%, as borne out by the *statements of past due interest and penalty charges as of July 15, 1998*, although it certainly was its burden to show the legal and factual support for the imposition. We need not remind that the burden of proof is the duty of any party to present evidence to establish its claim or defense by the amount of evidence required by law, which in civil cases is preponderance of evidence.[51] Consequently, we have to strike down the imposition.

Parenthetically, we observe that the stipulation in the promissory notes on the automatic increase of the interest rate to the prevailing rate[52] did not justify the increase of the interest rates because the respondent did not adduce evidence about the prevailing rates at the time material to this case.

On May 16, 2013, the Monetary Board of the Bangko Sentral ng Pilipinas, in the exercise of its statutory authority to review and fix interest rates, issued Circular No. 799, Series of 2013 to lower to 6% *per annum* the rate of interest for loan or forbearance of any money, goods or credits, and the rate allowed in judgment.[53] The revised rate applies only in the absence of

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[51] *United Merchants Corporation v. Country Bankers Insurance Corporation*, G.R. No. 198588, July 11, 2012, 676 SCRA 382, 395.

[52] Paragraph 5 of the Promissory Note, last sentence, reads:

In case of default, I/we agree that as additional compensation, the interest rate shall automatically be raised to the prevailing rate, the increased rate to be applied from the date of default. (Records, pp. 5, 7).

[53] Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) *per annum*.

stipulation in loan contracts. Hence, the contractual stipulations on the rates of interest contained in the promissory notes remained applicable.

Considering that, as mentioned, the ₱3,553,444.45 was an aggregate inclusive of the interest (*i.e.*, at the rates of 34.991% and 27.901% *per annum*); and that the penalty charges contravened the express provisions of the promissory notes, the RTC and the CA both erred on a matter of law, and we should correct their error as a matter of law in the interest of justice.

It is further held that the CA could not validly apply the lower interest rate of 14.239% *per annum* to the whole amount of ₱3,553,444.45 in contravention of the stipulation of the parties. In *Mallari v. Prudential Bank*,[54] the Court declared that the interest rate of "3% per month and higher are excessive, unconscionable and exorbitant, hence, the stipulation was void for being contrary to morals." Even so, the Court did not consider as unconscionable the interest rate of 23% *per annum* agreed upon by the parties. Upholding the 23% *per annum* interest rate agreed upon, the Court instead opined that "the borrowers cannot renege on their obligation to comply with what is incumbent upon them under the contract of loan as the said contract is the law between the parties and they are bound by its stipulations."[55] Consequently, the respondent could not impose the flat interest rate of 14.239% *per annum* on the petitioner's loan obligation. Verily, the obligatory force of the stipulations between the parties called for the imposition of the interest rates stipulated in the promissory notes.

To accord with the prevailing jurisprudence, the Court pronounces that the respondent was entitled to recover the principal amount of ₱1,500,000.00 subject to the stipulated interest of 14.239% *per annum* from date of default until full

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[54] G.R. No. 197861, June 5, 2013, 697 SCRA 555, 564.

[55] *Id*., citing *Villanueva v. Court of Appeals*, G.R. No. 163433, August 22, 2011, 655 SCRA 707, 716-717.

payment;[56] and the principal amount of ₱1,200,000.00 subject to the stipulated interest of 17.532% *per annum* from date of default until full payment.[57]

The next matter to be considered and determined is the date of default.

According to Article 1169 of the *Civil Code*, there is delay or default from the time the obligee judicially or extrajudicially demands from the obligor the fulfillment of his or her obligation. The records reveal that the respondent did not establish *when* the petitioner defaulted in her obligation to pay based on the two promissory notes. As such, its claim for payment computed from July 15, 1998 until full payment of the obligation had no moorings other than July 15, 1998 being the date reflected in the *statements of past due interest and penalty charges as of July 15, 1998*. Nonetheless, its counsel, through the letter dated July 7, 1998,[58] made a *final demand* in writing for the petitioner to settle her total obligation within five days from receipt. As the registry return receipt indicated,[59] the final demand letter was received for the petitioner by one Elisa dela Cruz on July 28, 1998. Hence, the petitioner had five days from such receipt, or until August 2, 1998, within which to comply. The reckoning date of default is, therefore, August 3, 1998.

As to the penalty charge, the same was warranted for being expressly stipulated in the promissory notes, to wit:

> I/we further agree to pay the Bank, in addition to the agreed interest rate, a penalty charge of *eighteen* per centum (18%) per annum based on any unpaid principal to be computed from date of default until full payment of the obligation.[60]

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[56] Records, p. 98.

[57] *Id*. at 99.

[58] *Id*. at 108.

[59] *Id*. at 109.

[60] *Rollo*, pp. 37 and 39.

Verily, a penal clause is an accessory undertaking attached to a principal obligation. It has for its purposes, *firstly*, to provide for liquidated damages; and, *secondly*, to strengthen the coercive force of the obligation by the threat of greater responsibility in the event of breach of obligation.[61] Under Article 1226 of the *Civil Code*,[62] a penal clause is a substitute indemnity for damages and the payment of interests in case of noncompliance, *unless there is a stipulation to the contrary*. In *Tan v. Court of Appeals,*[63] the Court has elaborated on the nature of a penalty clause in the following:

> Penalty on delinquent loans may take different forms. In *Government Service Insurance System v. Court of Appeals*, this Court has ruled that the New Civil Code permits an agreement upon a penalty apart from the monetary interest. If the parties stipulate this kind of agreement, the penalty does not include the monetary interest, and as such the two are different and distinct from each other and may be demanded separately. Quoting *Equitable Banking Corp. v. Liwanag,* the GSIS case went on to state that such a stipulation about payment of an additional interest rate partakes of the nature of a penalty clause which is sanctioned by law, more particularly under Article 2229 of the New Civil Code which provides that:
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> > If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and the absence of stipulation, the legal interest, which is six per cent per annum.
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> The penalty charge of two percent (2%) per month in the case at bar began to accrue from the time of default by the petitioner. There

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[61] IV Tolentino, *op. cit.*, at 259.

[62] Art. 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this code.

[63] G.R. No. 116285, October 19, 2001, 367 SCRA 571, 579-580.

is no doubt that the petitioner is liable for both the stipulated monetary interest and the stipulated penalty charge. The penalty charge is also called penalty or compensatory interest.

The Court has explained the rate of compensatory interest on monetary awards adjudged in decisions of the Court in *Planters Development Bank v. Lopez*,[64] citing *Nacar v. Gallery Frames*,[65] to wit:

> With respect to the computation of compensatory interest, Section 1 of Bangko Sentral ng Pilipinas (BSP) Circular No. 799, Series of 2013, which took effect on July 1, 2013, provides:
>
> > Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
>
> This provision amends Section 2 of Central Bank (CB) Circular No. 905-82, Series of 1982, which took effect on January 1, 1983. Notably, we recently upheld the constitutionality of CB Circular No. 905-82 in *Advocates for Truth in Lending, Inc., et al. v. Bangko Sentral ng Pilipinas Monetary Board, etc.* Section 2 of CB Circular No. 905-82 provides:
>
> > Section 2. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of express contract as to such rate of interest, shall continue to be twelve percent (12%) per annum.
>
> Pursuant to these changes, this Court modified the guidelines in *Eastern Shipping Lines, Inc. v. Court of Appeals* in the case of *Dario Nacar v. Gallery Frames, et al.(Nacar).* In Nacar, we established the following guidelines:
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> > I. When an obligation, regardless of its source, i.e., law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

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[64] G.R. No. 186332, October 23, 2013, 708 SCRA 481, 501-503.

[65] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 455-457.

II. **With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:**

> **1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.** (emphasis and underscore supplied)
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
>
> 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein.

To accord with the foregoing rulings, the 17.532% and 14.239% annual interest rates shall also respectively earn a penalty charge of 18% *per annum* reckoned on the unpaid principals computed from the date of default (August 3, 1998) until fully paid. This is in line with the express agreement between the parties to impose such penalty charge.

Article 2212 of the *Civil Code* requires that interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. Accordingly, the interest due shall itself earn legal interest of 6% *per annum* from the date of finality of the judgment until its full satisfaction, the interim period being deemed to be an equivalent to a forbearance of credit.[66]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 23, 2004 with the **MODIFICATION** that the petitioner shall pay to the respondent: (1) the principal sum of ₱1,500,000.00 under Promissory Note No. 232711, plus interest at the rate of 14.239% *per annum* commencing on August 3, 1998 until fully paid; (2) the principal sum of ₱1,200,000.00 under Promissory Note No. 232663, plus interest at the rate of 17.532% *per annum* commencing on August 3, 1998 until fully paid; (3) penalty interest on the unpaid principal amounts at the rate of 18% *per annum* commencing on August 3, 1998 until fully paid; (4) legal interest of 6% *per annum* on the interests commencing from the finality of this judgment until fully paid; (5) attorney's fees equivalent to 10% of the total amount due to the respondent; and (6) costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[66] *Planters Development Bank v. Lopez*, *supra* note 64.

FIRST DIVISION

[G.R. No. 182252. August 3, 2016]

JOSE NORBERTO ANG, *petitioner, vs.* **THE ESTATE OF SY SO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; NATIONAL ECONOMY AND PATRIMONY; ALIENS ARE PROHIBITED FROM OWNING LANDS IN THE PHILIPPINES; THE PROHIBITION IS SUBJECT ONLY TO LIMITED CONSTITUTIONAL EXCEPTIONS, AND NOT EVEN AN IMPLIED TRUST CAN BE PERMITTED ON EQUITY CONSIDERATIONS.— The purchase of the subject parcels of land was made sometime in 1944, during the effectivity of the 1935 Constitution. x x x As early as *Krivenko v. Register of Deeds*, We have interpreted x x x [Article XIII, Section 1 and Section 5] to mean that, under the Constitution then in force, aliens may not acquire residential lands: "One of the fundamental principles underlying the provision of Article XIII of the Constitution x x x is 'that lands, minerals, forests, and other natural resources constitute the exclusive heritage of the Filipino nation. They should, therefore, be preserved for those under the sovereign authority of that nation and for their posterity.'" These provisions have been substantially carried over to the present Constitution, and jurisprudence confirms that aliens are disqualified from acquiring lands of the public domain. In *Ting Ho v. Teng Gui, Muller v. Muller, Frenzel v. Catito, and Cheesman v. Intermediate Appellate Court*, all cited in *Matthews v. Sps. Taylor*, We upheld the constitutional prohibition on aliens acquiring land in the Philippines. We have consistently ruled thus in line with constitutional intent to preserve and conserve the national patrimony. Our Constitution clearly reserves for Filipino citizens or corporations at least sixty percent of the capital of which is owned by Filipinos the right to acquire lands of the public domain. The prohibition against aliens owning lands in the Philippines is subject only to limited constitutional exceptions, and not even an implied trust can be permitted on equity considerations.

2. ID.; ID.; ID.; IN SALES OF REAL ESTATE TO ALIENS INCAPABLE OF HOLDING TITLE THERETO, THE SOLICITOR GENERAL IS THE PROPER PARTY WHO COULD ASSAIL THE SALE, FOR THE VENDOR AND THE VENDEE ARE DEEMED IN *PARI DELICTO,* AND THE COURTS WILL NOT AFFORD PROTECTION TO EITHER PARTY.— Applying the x x x rules to the present case, We find that x x x [Sy So] acquired the subject parcels of land in violation of the constitutional prohibition against aliens owning real property in the Philippines. Axiomatically, the properties in question cannot be legally reconveyed to one who had no right to own them in the first place. x x x The Solicitor General, however, may initiate an action for reversion or escheat of the land to the State. In sales of real estate to aliens incapable of holding title thereto by virtue of the provisions of the Constitution, both the vendor and the vendee are deemed to have committed the constitutional violation. Being in *pari delicto* the courts will not afford protection to either party. The proper party who could assail the sale is the Solicitor General.

APPEARANCES OF COUNSEL

Rogelio S. Constantino for petitioner.
Gregorio D. Manalang for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition filed pursuant to Rule 45 assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85444, which partially granted respondent Sy So's appeal from the Decision[3] of the Regional Trial Court

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[1] *Rollo*, pp. 50-65; CA Decision dated 25 July 2007, penned by Associate Justice Myrna Dimaranan-Vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[2] *Id*. at 68; CA Resolution dated 27 March 2008.

[3] *Id*. at 73-108; RTC Decision dated 23 May 2005, penned by Acting Judge-Designate Luisito C. Sardillo.

(RTC), Branch 130, Caloocan City, in Civil Case No. C-15945.

THE ANTECEDENT FACTS

Sometime in the late 1930s, respondent Sy So, a Chinese citizen, was married to a certain Jose Ang.[4] Sy So maintained a *sari-sari* store, while her husband maintained a foundry shop. Testimonial evidence showed that, by virtue of her business, she was financially well-off on her own.[5]

The couple was childless. In 1941, when a woman approached respondent Sy So and offered a seven- or eight-month-old infant for adoption, respondent immediately accepted the offer.[6] No formal adoption papers were processed, but the child was christened as Jose Norberto Ang (Jose Norberto), the present petitioner.[7] Respondent subsequently "adopted" three other wards: Mary Ang, Tony Ang, and Teresita Tan.[8]

Jose Ang died in 1943 during the Pacific War.[9] After his death, respondent Sy So maintained her store and engaged in cigarette trading.[10]

Later, respondent Sy So acquired a property described as a 682.5 square meter lot located at 10th Avenue, Grace Park, Caloocan City. She registered it under TCT No. 73396 (the 10th Avenue lot) in the name of petitioner Jose Norberto, who was then three years old, in keeping with the Chinese tradition of registering properties in the name of the eldest male son or ward. Respondent Sy So subsequently acquired the other subject

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[4] *Id.* at 50.

[5] *Id.* at 87-88.

[6] *Id.* at 73.

[7] *Id.* at 51.

[8] *Id.* at 73.

[9] *Id.* at 51.

[10] *Id.*

property with an area of 1,977 square meters, located at 11th Avenue, Grace Park, Caloocan City and registered under TCT No. 10425 (the 11th Avenue lot) on 24 July 1944, likewise under Jose Norberto's name.[11]

Between 1940 and 1950, a six-door apartment building on the 10th Avenue lot was constructed at respondent Sy So's expense.[12] Later on, two more apartment doors were built on the property, bringing the total to eight apartment doors. For over 30 years, respondent Sy So, along with petitioner and her other wards, lived there.[13]

Respondent Sy So alleged that she kept the titles to the two properties under lock and key and never showed them to anyone.[14] However, she gave Jose Norberto a photocopy of TCT No. 10425, so that he could show it to prospective tenants.[15]

Unbeknownst to respondent Sy So, Jose Norberto filed Petitions for the Issuance of Second Owner's Duplicate Certificate of Title for TCT Nos. 73396 and 10425.[16] In 1971, he sold the 11th Avenue lot, which was covered by TCT No. 10425.[17]

On 5 April 1974, Jose Norberto's counsel wrote respondent Sy So, demanding a monthly payment of ₱500 as her contribution for real estate taxes on the 10th Avenue lot.[18]

On 14 March 1989, said counsel wrote another letter to respondent Sy So, formally demanding that she vacate the 10th

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[11] *Id*.

[12] *Id*. at 74.

[13] *Id*.

[14] Records, p. 56.

[15] *Id*.

[16] *Rollo,* p. 52.

[17] *Id*. at 74.

[18] Records, pp. 205-206.

Avenue lot within a period of three months, and informing her that she would be charged ₱5,000 as monthly rent.[19]

On 25 July 1989, Jose Norberto filed an ejectment suit against respondent Sy So on the ground of nonpayment of rentals on the 10th Avenue lot.[20] The ejectment case was dismissed on 30 October 1989 by the Metropolitan Trial Court.[21]

On 14 November 1996, Jose Norberto filed a second ejectment case against respondent Sy So, but the case was dismissed by the MTC on 30 October 1997. The dismissal was affirmed by this Court on 4 June 2001.[22]

Meanwhile, on 9 June 1993, respondent Sy So filed with the RTC a case for "Transfer of Trusteeship from the Defendant Jose Norberto Ang to the New Trustee, Tony Ang, with Damages.[23] Citing Jose Norberto's gross ingratitude, disrespectfulness, dishonesty and breach of trust, respondent Sy So argued that she had bought the two parcels of land and constructed the apartment doors thereon at her own expense. Thus, she alleged that there was an implied trust over the properties in question.[24] She thereafter prayed for the following reliefs:

> 1. [Orders be] issued to the Register of Deeds of Caloocan City, ordering the removal or cancellation of the name of Jose Norberto Ang as owner in TCT No. 73396 in the value of ₱375,000.00 more or less which includes improvements, and placing, instead, the name of Tony Ang as the owner and trustee;

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[19] *Id*. at 216.

[20] *Rollo,* p. 74.

[21] *Id*. at 52.

[22] *Id.*

[23] *Id*. at 73.

[24] Records, pp. 3-5.

2. To declare null and void the fraudulent sale made to Benjamin Lee as per Annex "C" of the complaint;

3. Ordering the defendant to pay moral damages in the amount of at least ₱50,000.00;

4. Plaintiff prays for such other relief or reliefs as may be just, proper and equitable under the premises.[25]

In his Answer, Jose Norberto countered that respondent Sy So was a plain housewife; that the two subject parcels of land were acquired through the money given to him by his foster father, Jose Ang; and that the apartments were built using funds derived from the sale of the latter's other properties. Jose Norberto further alleged that when he came of age, he took possession of the properties and allowed respondent Sy So to stay thereon without paying rent. However, he shouldered the real estate taxes on the land.[26]

THE RULING OF THE RTC

After trial, the RTC rendered a Decision on 23 May 2005 dismissing respondent Sy So's Complaint. The dispositive portion reads:

> WHEREFORE, above premises considered, this Court hereby deems it proper to dismiss Plaintiffs Complaint, as well as Defendant's counterclaim, as the same are hereby DISMISSED for failure of the parties to prove their respective claims by preponderance of evidence.
>
> Likewise, the titles under the name of the Defendants are hereby confirmed and affirmed with all the attributes of ownership.
>
> SO ORDERED.[27]

In so ruling, the trial court found that there was no implied trust because, under Art. 1448 of the New Civil Code, "[t]here is an implied trust when property is sold, and the legal estate

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[25] *Id*. at 5.

[26] *Id*. at 46-47.

[27] *Rollo*, p. 105.

is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property." In this case, the trial court reasoned that respondent Sy So did not intend to have the beneficial interest of the properties, but to make her wards the beneficiaries thereof.[28]

Moreover, the RTC cited Article 1448 of the New Civil Code which states: "[i]f the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child." Applying this provision to the present case, the trial court ruled that when Sy So gave the subject properties to Jose Norberto — who was her child, though not legally adopted — no implied trust was created pursuant to law.[29]

Finally, the RTC ruled that the action was a collateral attack on Jose Norberto's Torrens title; and that, in any event, respondent Sy So's cause of action was barred by laches, having been instituted 49 years after the titles had been issued in petitioner's name.[30]

THE RULING OF THE CA

Aggrieved by the trial court's Decision, respondent Sy So appealed to the CA.

In her Plaintiff-Appellant's Brief, Sy So argued that Jose Norberto could not be considered as her child in the absence of any formal adoption proceedings.[31] This being so, under Article 1448 of the New Civil Code, there could be no disputable presumption that the properties had been given to him as gifts.[32]

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[28] *Id*. at 99-100.

[29] *Id*. at 100.

[30] *Id*. at 100-105.

[31] *CA rollo,* pp. 65-68.

[32] *Id*. at 68-70.

She also argued that laches had not set in, because there is no prescriptive period for an action to compel a trustee to convey the property registered in the latter's name for the benefit of the *cestui que trust*.[33] Furthermore, she alleged that the trust was repudiated on 25 July 1989 when the first ejectment suit was filed by petitioner, and that when the present case was instituted against him, only three years, 10 months and 14 days had elapsed.[34]

For his part, petitioner argued in his Appellee's Brief that Sy So had acknowledged that Jose Norberto was one of her wards or adopted children; hence, Sy So could no longer claim that he was not her child.[35] He further argued that the instant case should have been dismissed outright because respondent, being a Chinese citizen, could not own real property in the Philippines under the 1987 Constitution which prohibits aliens from owning private lands save in cases of hereditary succession.[36] He alleged that the present case involved a prohibited collateral attack against his title and claimed that, as the Complaint was filed almost 50 years after the issuance of the title in his name, the action was already barred by laches.[37]

The appellate court partially granted respondent Sy So's appeal in a Decision dated 25 July 2007, the decretal portion of which reads:

WHEREFORE, premises considered, the Appeal is PARTIALLY GRANTED in the sense that Appellant's claim for reimbursement of the purchase price over the lot covered by TCT No. 10425 is DENIED on the ground of prescription whereas with respect to Appellant's action re the subject property covered by TCT No. 73396, the Appellant is declared as the true, absolute and lawful owner of the property under TCT No. 73396 and ordering the Appellee to

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[33] *Id*. at 74.

[34] *Id*. at 73-74.

[35] *Id*. at 129-130.

[36] *Id*. at 136-138.

[37] *Id*. at 138-140.

RECONVEY said property to the Appellant within ten (10) days from notice and to pay the costs of the suit.

SO ORDERED.[38]

The CA upheld the applicability of Article 1448[39] of the New Civil Code and the existence of an implied trust.[40] Moreover, it found that petitioner had not been legally adopted by respondent[41] and thus, there being no legal relationship between the parties, the disputable presumption under Article 1448 did not arise.[42]

As to the issue of whether there was a collateral attack on Jose Norberto's title, the CA ruled that the legal doctrine of indefeasibility of a Torrens title was inapplicable. It explained that respondent did not question the validity of petitioner's title, but merely prayed for the transfer thereof, as the instant action was actually one of reconveyance.[43]

Finally, the CA found that laches had set in as regards the 11th Avenue lot covered by TCT No. 10425, but not with respect to the 10th Avenue lot covered by TCT No. 73396. Since respondent Sy So was in possession of the 10th Avenue lot, the CA reasoned that the action for reconveyance was imprescriptible.[44]

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[38] *Rollo,* pp. 64-65.

[39] Art. 1448. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

[40] *Rollo,* pp. 54-62.

[41] *Id*. at 56-57.

[42] *Id*. at 57.

[43] *Id*. at 62-63.

[44] *Id*. at 63-64.

However, the CA did not pass upon petitioner's contention that under the Constitution, respondent Sy So was disqualified from owning private lands in the Philippines.

After unsuccessfully praying for a reconsideration of the CA Decision,[45] Jose Norberto filed the instant Rule 45 petition for review before this Court.

On 9 October 2008, We received notice of the death of Sy So pending the resolution of the instant case.[46] Counsel for respondent likewise notified this Court that Tony Ang, one of the foster sons and allegedly the trustee-designate of the deceased, should substitute in her stead.[47]

In a Reply dated 17 December 2008, petitioner Jose Norberto vehemently opposed the substitution. He argued that the original action for transfer of trusteeship was an action *in personam*; thus, it was extinguished by the death of respondent.[48] Moreover, he contended that Tony Ang had no legal personality to represent Sy So as her alleged trustee, because there was as yet no final judgment validating the change of trusteeship between the parties.[49]

OUR RULING

We grant the Petition.

Respondent Sy So would have this Court declare that she is the true owner of the real properties in question and that as owner, she has the right to have the land titles transferred from the name of Jose Norberto to that of Tony Ang, Sy So's trustee-designate. On the other hand, petitioner Jose Norberto counters that reconveyance does not lie, because respondent Sy So is a Chinese citizen.

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[45] *Id*. at 68.

[46] *Id*. at 145.

[47] *Id*.

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

[49] *Id*. at 151.

Sy So's Chinese citizenship is undisputedly shown by the records, and even supported by documentary evidence presented by the representative of respondent Sy So herself.

The purchase of the subject parcels of land was made sometime in 1944,[50] during the effectivity of the 1935 Constitution. The relevant sections of Article XIII thereof provide:

SECTION 1. All agricultural timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant.

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SECTION 5. Save in cases of hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

As early as *Krivenko v. Register of Deeds,*[51] We have interpreted the foregoing to mean that, under the Constitution then in force, aliens may not acquire residential lands: "One of the fundamental principles underlying the provision of Article

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[50] *Id.* at 51.

[51] 79 Phil. 461 (1947), as cited in *Ting Ho, Jr. v. Teng Gui,* 580 Phil. 378 (2008).

XIII of the Constitution x x x is 'that lands, minerals, forests, and other natural resources constitute the exclusive heritage of the Filipino nation. They should, therefore, be preserved for those under the sovereign authority of that nation and for their posterity.'"

These provisions have been substantially carried over to the present Constitution, and jurisprudence confirms that aliens are disqualified from acquiring lands of the public domain. In *Ting Ho v. Teng Gui,*[52] *Muller v. Muller*[53] *Frenzel v. Catito,*[54] and *Cheesman v. Intermediate Appellate Court,*[55] all cited in *Matthews v. Sps. Taylor*,[56] We upheld the constitutional prohibition on aliens acquiring land in the Philippines. We have consistently ruled thus in line with constitutional intent to preserve and conserve the national patrimony. Our Constitution clearly reserves for Filipino citizens or corporations at least sixty percent of the capital of which is owned by Filipinos the right to acquire lands of the public domain.[57] The prohibition against aliens owning lands in the Philippines is subject only to limited constitutional exceptions, and not even an implied trust can be permitted on equity considerations.[58]

Much as We sympathize with the plight of a mother who adopted an infant son, only to have her ungrateful ward eject her from her property during her twilight years, We cannot grant her prayer. Applying the above rules to the present case, We find that she acquired the subject parcels of land in violation of the constitutional prohibition against aliens owning real property in the Philippines. Axiomatically, the properties in

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[52] 580 Phil. 378 (2008).

[53] 531 Phil. 460 (2006).

[54] 453 Phil. 885 (2003).

[55] 271 Phil. 89 (1991).

[56] 608 Phil. 193(2009).

[57] *Ting Ho v. Teng Gui, supra* note 51 at 388.

[58] *Id*. at 390.

question cannot be legally reconveyed to one who had no right to own them in the first place. This being the case, We no longer find it necessary to pass upon the question of respondent Sy So's substitution in these proceedings.

The Solicitor General, however, may initiate an action for reversion or escheat of the land to the State.[59] In sales of real estate to aliens incapable of holding title thereto by virtue of the provisions of the Constitution, both the vendor and the vendee are deemed to have committed the constitutional violation. Being in *pari delicto* the courts will not afford protection to either party. The proper party who could assail the sale is the Solicitor General.[60]

WHEREFORE, the instant petition for review is **GRANTED.** The assailed Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 85444 dated 25 July 2007 and 27 March 2008, respectively, insofar as petitioner was ordered to reconvey the property covered by TCT No. 73396 to respondent and to pay the costs of suit, are hereby **REVERSED.**

The Office of the Solicitor General is **DIRECTED** to initiate the appropriate proceedings for the reversion of the subject property to the State.

SO ORDERED.

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

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[59] *Rellosa v. Gaw Chee Hun,* 93 Phil. 827 (1953).

[60] *Lee v. Republic,* 418 Phil. 793 (2001) citing *Vasquez v. Li Seng Giap,* 96 Phil. 447, 451 [1955].

THIRD DIVISION

[G.R. No. 184008. August 3, 2016]

INDIAN CHAMBER OF COMMERCE PHILS., INC., *petitioner, vs.* **FILIPINO INDIAN CHAMBER OF COMMERCE IN THE PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CORPORATE NAMES; PROHIBITION AGAINST THE USE OF A CORPORATE NAME WHICH IS IDENTICAL OR DECEPTIVELY OR CONFUSINGLY SIMILAR TO THAT OF ANY EXISTING CORPORATION; REQUISITES.— Section 18 of the Corporation Code expressly prohibits the use of a corporate name which is identical or deceptively or confusingly similar to that of any existing corporation x x x. In *Philips Export B.V. v. Court of Appeals*, this Court ruled that to fall within the prohibition, two requisites must be proven, to wit: "(1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical; or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law." These two requisites are present in this case.

2. ID.; ID.; ID.; ID.; PRIORITY OF ADOPTION RULE; APPLIED TO DETERMINE PRIOR RIGHT OVER THE USE OF A CORPORATE NAME, TAKING INTO CONSIDERATION THE DATES WHEN THE PARTIES USED THEIR RESPECTIVE CORPORATE NAMES.— In *Industrial Refractories Corporation of the Philippines v. Court of Appeals*, the Court applied the priority of adoption rule to determine prior right, taking into consideration the dates when the parties used their respective corporate names. x x x In this case, FICCPI was incorporated on March 14, 2006. On the other hand, ICCPI was incorporated only on April 5, 2006, or a month after FICCPI registered its corporate name. Thus, applying the principle in the *Refractories* case, we hold that FICCPI, which

was incorporated earlier, acquired a prior right over the use of the corporate name. ICCPI cannot argue that it first incorporated and held the name "Filipino Indian Chamber of Commerce," in 1977; and that it established the name's goodwill until it failed to renew its name due to oversight. It is settled that a corporation is *ipso facto* dissolved as soon as its term of existence expires. SEC Memorandum Circular No. 14-2000 likewise provides for the use of corporate names of dissolved corporations x x x. When the term of existence of the defunct FICCPI expired on November 24, 2001, its corporate name cannot be used by other corporations within three years from that date, until November 24, 2004. FICCPI reserved the name "Filipino Indian Chamber of Commerce in the Philippines, Inc." on January 20, 2005, or beyond the three-year period. Thus, the SEC was correct when it allowed FICCPI to use the reserved corporate name.

3. ID.; ID.; ID.; ID.; THE PROPOSED NAME IN CASE AT BAR IS IDENTICAL TO THAT OF AN EXISTING CORPORATION.— ICCPI's name is identical to that of FICCPI. ICCPI's and FICCPI's corporate names both contain the same words "Indian Chamber of Commerce." ICCPI argues that the word "Filipino" in FICCPI's corporate name makes it easily distinguishable from ICCPI. It adds that confusion and deception are effectively precluded by appending the word "Filipino" to the phrase "Indian Chamber of Commerce." Further, ICCPI claims that the corporate name of FICCPI uses the words "in the Philippines" while ICCPI uses only "Phils., Inc." x x x These words do not effectively distinguish the corporate names. On the one hand, the word "Filipino" is merely a description, referring to a Filipino citizen or one living in the Philippines, to describe the corporation's members. On the other, the words "in the Philippines" and "Phils., Inc." are simply geographical locations of the corporations which, even if appended to both the corporate names, will not make one distinct from the other. Under the facts of this case, these words cannot be separated from each other such that each word can be considered to add distinction to the corporate names. Taken together, the words in the phrase "in the Philippines" and in the phrase "Phils., Inc." are synonymous — they both mean the location of the corporation. x x x The other two words alluded to by petitioner [ICCPI] that allegedly distinguishes its corporate

name from that of the respondent are the words 'in' and 'the' in the respondent's corporate name. To our mind, the presence of the words 'in' and 'the' in respondent's corporate name does not, in any way, make an effective distinction to that of petitioner." Petitioner cannot argue that the combination of words in respondent's corporate name is merely descriptive and generic, and consequently cannot be appropriated as a corporate name to the exclusion of the others. Save for the words "Filipino," "in the," and "Inc.," the corporate names of petitioner and respondent are identical in all other respects.

4. ID.; ID.; ID.; ID.; TO DETERMINE THE EXISTENCE OF CONFUSING SIMILARITY IN CORPORATE NAMES, THE TEST IS WHETHER THE SIMILARITY IS SUCH AS TO MISLEAD A PERSON, USING ORDINARY CARE AND DISCRIMINATION.— ICCPI's corporate name is deceptively or confusingly similar to that of FICCPI. It is settled that to determine the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person, using ordinary care and discrimination. In so doing, the court must examine the record as well as the names themselves. Proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur. In this case, the overriding consideration in determining whether a person, using ordinary care and discrimination, might be misled is the circumstance that both ICCPI and FICCPI have a common primary purpose, that is, the promotion of Filipino-Indian business in the Philippines.

5. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES ARE GENERALLY ACCORDED RESPECT ON APPEAL, IN RECOGNITION OF THEIR EXPERTISE ON THE SPECIFIC MATTERS UNDER THEIR CONSIDERATION.— Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, and more so if the same has been upheld by the appellate court, as in this case.

6. MERCANTILE LAW; CORPORATION LAW; PRESIDENTIAL DECREE NO. 902-A; SECURITIES AND

EXCHANGE COMMISSION; HAS THE AUTHORITY TO DE-REGISTER CORPORATE NAMES WHICH IN ITS ESTIMATION ARE LIKELY TO GENERATE CONFUSION.— By express mandate of law, the SEC has absolute jurisdiction, supervision and control over all corporations. It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporation involved, but more so for the protection of the public. It has the authority to de-register at all times, and under all circumstances corporate names which in its estimation are likely to generate confusion.

APPEARANCES OF COUNSEL

Rivera Santos & Maranan for petitioner.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the Decision and Resolution of the Court of Appeals (CA) dated May 15, 2008[2] and August 4, 2008,[3] respectively, in CA-G.R. SP No. 97320. The Decision and Resolution affirmed the Securities and Exchange Commission *En Banc* (SEC *En Banc*) Decision dated November 30, 2006[4] directing petitioner Indian Chamber of Commerce Phils., Inc. to modify its corporate name.

The Facts

Filipino-Indian Chamber of Commerce of the Philippines, Inc. (defunct FICCPI) was originally registered with the SEC as Indian Chamber of Commerce of Manila, Inc. on November

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[1] *Rollo,* pp. 23-39.

[2] *Id.* at 9-16. *Ponencia* by Associate Justice Isaias Dicdican, with Associate Justices Juan Q. Enriquez, Jr. and Ramon R. Garcia, concurring.

[3] *Rollo,* pp. 18-19.

[4] *Id.* at 157-163.

24, 1951, with SEC Registration Number 6465.[5] On October 7, 1959, it amended its corporate name into Indian Chamber of Commerce of the Philippines, Inc., and further amended it into Filipino-Indian Chamber of Commerce of the Philippines, Inc. on March 4, 1977.[6] Pursuant to its Articles of Incorporation, and without applying for an extension of its corporate term, the defunct FICCPI's term of existence expired on November 24, 2001.[7]

SEC Case No. 05-008

On January 20, 2005, Mr. Naresh Mansukhani (Mansukhani) reserved the corporate name "Filipino Indian Chamber of Commerce in the Philippines, Inc." (FICCPI), for the period from January 20, 2005 to April 20, 2005, with the Company Registration and Monitoring Department (CRMD) of the SEC.[8] In an opposition letter dated April 1, 2005, Ram Sitaldas (Sitaldas), claiming to be a representative of the defunct FICCPI, alleged that the corporate name has been used by the defunct FICCPI since 1951, and that the reservation by another person who is not its member or representative is illegal.[9]

The CRMD called the parties for a conference and required them to submit their position papers. Subsequently, on May 27, 2005, the CRMD rendered a decision granting Mansukhani's reservation,[10] holding that he possesses the better right over the corporate name.[11] The CRMD ruled that the defunct FICCPI has no legal personality to oppose the reservation of the corporate name by Mansukhani. After the expiration of the defunct

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[5] *Id.* at 80.

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Rollo,* p. 81.

[10] *Id.* at 80-85.

[11] *Id.* at 85.

FICCPI's corporate existence, without any act on its part to extend its term, its right over the name ended. Thus, the name "Filipino Indian Chamber of Commerce in the Philippines, Inc." is free for appropriation by any party.[12]

Sitaldas appealed the decision of the CRMD to the SEC *En Banc*, which appeal was docketed as SEC Case No. 05-008. On December 7, 2005, the SEC *En Banc* denied the appeal,[13] thus:

WHEREFORE, **premises considered,** the instant appeal is **HEREBY DISMISSED for lack of merit**. Let a copy of this decision be furnished the Company Registration and Monitoring Department of this Commission for its appropriate action.[14] (Emphasis in the original.)

Sitaldas appealed the SEC *En Banc* decision to the CA, docketed as CA-G.R. SP No. 92740. On September 27, 2006, the CA affirmed the decision of the SEC *En Banc*.[15] It ruled that Mansukhani, reserving the name "Filipino Indian Chamber of Commerce in the Philippines, Inc.," has the better right over the corporate name. It ruled that with the expiration of the corporate life of the defunct FICCPI, without an extension having been filed and granted, it lost its legal personality as a corporation.[16] Thus, the CA affirmed the SEC *En Banc* ruling that after the expiration of its term, the defunct FICCPI's rights over the name also ended.[17] The CA also cited SEC Memorandum Circular No. 14-2000[18] which gives protection to corporate names

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[12] *Id.* at 84.

[13] *Id.* at 86-92.

[14] *Id.* at 91.

[15] *Id.* at 150-156.

[16] *Id.* at 153.

[17] *Id.*

[18] Revised Guidelines in the Approval of Corporate and Partnership Names, dated October 24, 2000:

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for a period of three years after the approval of the dissolution of the corporation.[19] It noted that the filing of the reservation for the use of the corporate name "Filipino Indian Chamber of Commerce in the Philippines, Inc.," and the opposition were filed only, in January 2005, were way beyond this three-year period.[20]

On March 14, 2006, pending resolution by the CA, the SEC issued the Certificate of Incorporation[21] of respondent FICCPI, pursuant to its ruling in SEC Case No. 05-008.

SEC Case No. 06-014

Meanwhile, on December 8, 2005,[22] Mr. Pracash Dayacan, who allegedly represented the defunct FICCPI, filed an application with the CRMD for the reservation of the corporate name "Indian Chamber of Commerce Phils., Inc." (ICCPI).[23] Upon knowledge, Mansukhani, in a letter dated February 14, 2006,[24] formally opposed the application. Mansukhani cited the SEC *En Banc* decision in SEC Case No. 05-008 recognizing him as the one possessing the better right over the corporate name "Filipino-Indian Chamber of Commerce in the Philippines, Inc."[25]

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14. The name of a dissolved firm shall not be allowed to be used by other firms within three (3) years after the approval of the dissolution of the corporation by the Commission, unless allowed by the last stockholders representing at least majority of the outstanding capital stock of the dissolved firm.

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[19] *Rollo*, p. 155.

[20] *Id.* at 153.

[21] *Id.* at 93.

[22] *Id.* at 113.

[23] *Id.* at 159.

[24] *Id.* at 107.

[25] *Id.*

In a letter dated April 5, 2006,[26] the CRMD denied Mansukhani's opposition. It stated that the name "Indian Chamber of Commerce Phils., Inc." is not deceptively or confusingly similar to "Filipino Indian Chamber of Commerce in the Philippines, Inc." On the same date, the CRMD approved and issued the Certificate of Incorporation[27] of petitioner ICCPI.

Thus, respondent FICCPI, through Mansukhani, appealed the CRMD's decision to the SEC *En Banc*.[28] The appeal was docketed as SEC Case No. 06-014. On November 30, 2006, the SEC *En Banc* granted the appeal filed by FICCPI,[29] and reversed the CRMD's decision. Citing Section 18 of the Corporation Code,[30] the SEC *En Banc* made a finding that "both from the standpoint of their [ICCPI and FICCPI] corporate names and the purposes for which they were established, there exist[s] a similarity that could inevitably lead to confusion."[31] It also ruled that "oppositor [FICCPI] has the prior right to use its corporate name to the exclusion of the others. It was registered with the Commission on March 14, 2006 while respondent [ICCPI] was registered on April 05, 2006. By virtue of oppositor's [FICCPI] prior appropriation and use of its name, it is entitled to protection against the use of identical or similar name of another corporation."[32]

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[26] *Rollo,* p. 64.

[27] *Id.* at 115.

[28] *Id.* at 65-79.

[29] *Id.* at 157-163.

[30] Section 18. *Corporate name*.— No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name.

[31] *Rollo*, p. 162.

[32] *Id.* at 160.

Thus, the SEC *En Banc* ruled, to wit:

> WHEREFORE, the appeal is hereby granted and the assailed Order dated April 05, 2006 is hereby REVERSED and SET ASIDE and respondent is directed to change or modify its corporate name within thirty (30) days from the date of actual receipt hereof.
>
> **SO ORDERED**.[33] (Emphasis in the original.)

ICCPI appealed the SEC *En Banc* decision in SEC Case No. 06-014 to the CA.[34] The appeal, docketed as CA-G.R. SP No. 97320, raised the following issues:

> A. The Honorable SEC *En Banc* committed serious error when it held that petitioner's corporate name (ICCPI) could inevitably lead to confusion;
>
> B. Respondent's corporate name (FICCPI) did not acquire secondary meaning; and
>
> C. The Honorable SEC *En Banc* violated the rule of equal protection when it denied petitioner (ICCPI) the use of the descriptive generic words.[35]

In a decision dated May 15, 2008,[36] the CA affirmed the decision of the SEC *En Banc*. It held that by simply looking at the corporate names of ICCPI and FICCPI, one may readily notice the striking similarity between the two. Thus, an ordinary person using ordinary care and discrimination may be led to believe that the corporate names of ICCPI and FICCPI refer to one and the same corporation.[37] The CA further ruled that ICCPI's corporate name did not comply with the requirements of SEC Memorandum Circular No. 14-2000. It noted that under the facts of this case, it is the registered corporate name, FICCPI,

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[33] *Id.* at 162.

[34] *Id.* at 164-181.

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

[36] *Supra* note 2.

[37] *Rollo,* p. 14.

which contains the word (Filipino) making it different from the proposed corporate name. SEC Memorandum Circular No. 14-2000 requires, however, that it should be the proposed corporate name which should contain one distinctive word different from the name of the corporation already registered, and not the other way around, as in this case.[39] Finally, the CA held that the SEC *En Banc* did not violate ICCPI's right to equal protection when it ordered ICCPI to change its corporate name. The SEC *En Banc* merely compelled ICCPI to comply with its undertaking to change its corporate name in case another person or firm has acquired a prior right to the use of the said name or the same is deceptively or confusingly similar to one already registered with the SEC.[40]

The dispositive portion of the CA decision reads:

WHEREFORE, premises considered, the petition filed in this case is hereby **DENIED** and the assailed Decision of the Securities and Exchange Commission *en banc* in SEC EN BANC Case No. 06-014 is hereby **AFFIRMED**.

SO ORDERED.[41] (Emphasis in the original.)

In its Resolution dated August 4, 2008,[42] the CA denied the Motion for Reconsideration filed by ICCPI.

The Petition[43]

ICCPI now appeals the CA decision before this Court raising the following arguments:

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[39] *Id.* at 15.

[40] *Id.* at 15-16.

[41] *Id.* at 16.

[42] *Supra* note 3.

[43] On September 14, 2015, we resolved to require ICCPI to inform the Court whether it complied with the SEC Decision in SEC Case No. 06-014

A. The Honorable Court of Appeals committed serious error when it upheld the findings of the SEC *En Banc*;

B. The Honorable Court of Appeals committed serious error when it held that there is similarity between the petitioner and the respondent (*sic*) corporate name that would inevitably lead to confusion; and

C. Respondent's corporate name did not acquire secondary meaning.[44]

The Court's Ruling

We uphold the decision of the CA.

Section 18 of the Corporation Code expressly prohibits the use of a corporate name which is identical or deceptively or confusingly similar to that of any existing corporation:

No corporate name may be allowed by the Securities and Exchange Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law or is patently deceptive, confusing or contrary to existing laws. When a change in the corporate name is approved, the Commission shall issue an amended certificate of incorporation under the amended name. (Underscoring supplied.)

In *Philips Export B.V. v. Court of Appeals*,[45] this Court ruled that to fall within the prohibition, two requisites must be proven, to wit:

(1) that the complainant corporation acquired a prior right over the use of such corporate name; and

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to change or modify its corporate name. In its Manifestation with Compliance dated April 1, 2016, ICCPI informed the Court that it complied with the SEC Decision in SEC Case No. 06-014, and is currently using the name "Federation of Indian Chambers of Commerce, Inc." However, despite compliance with the SEC Decision, ICCPI is not waiving its right to pursue the petition and to reacquire its former name. *Rollo,* pp. 258-261.

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

[45] G.R. No. 96161, February 21, 1992, 206 SCRA 457.

(2) the proposed name is either:

(a) identical; or

(b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or

(c) patently deceptive, confusing or contrary to existing law.[46]

These two requisites are present in this case.

FICCPI acquired a prior right over the use of the corporate name

In *Industrial Refractories Corporation of the Philippines v. Court of Appeals*,[47] the Court applied the priority of adoption rule to determine prior right, taking into consideration the dates when the parties used their respective corporate names. It ruled that "Refractories Corporation of the Philippines" (RCP), as opposed to "Industrial Refractories Corporation of the Philippines" (IRCP), has acquired the right to use the word "Refractories" as part of its corporate name, being its prior registrant on October 13, 1976. The Court noted that IRCP only started using its corporate name when it amended its Articles of Incorporation on August 23, 1985.[48]

In this case, FICCPI was incorporated on March 14, 2006. On the other hand, ICCPI was incorporated only on April 5, 2006, or a month after FICCPI registered its corporate name. Thus, applying the principle in the *Refractories* case, we hold that FICCPI, which was incorporated earlier, acquired a prior right over the use of the corporate name.

ICCPI cannot argue that it first incorporated and held the name "Filipino Indian Chamber of Commerce," in 1977; and that it established the name's goodwill until it failed to renew

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[46] *Id*. at 463.

[47] G.R. No. 122174, October 3, 2002, 390 SCRA 252.

[48] *Id.* at 260.

its name due to oversight.[49] It is settled that a corporation is *ipso facto* dissolved as soon as its term of existence expires.[50] The Guidelines SEC Memorandum Circular No. 14-2000 likewise provides for the use of corporate names of dissolved corporations:

> 14. The name of a dissolved firm shall not be allowed to be used by other firms within three (3) years after the approval of the dissolution of the corporation by the Commission, unless allowed by the last stockholders representing at least majority of the outstanding capital stock of the dissolved firm.

When the term of existence of the defunct FICCPI expired on November 24, 2001, its corporate name cannot be used by other corporations within three years from that date, until November 24, 2004. FICCPI reserved the name "Filipino Indian Chamber of Commerce in the Philippines, Inc." on January 20, 2005, or beyond the three-year period. Thus, the SEC was correct when it allowed FICCPI to use the reserved corporate name.

ICCPI's name is identical and deceptively or confusingly similar to that of FICCPI

The second requisite in the *Philips Export* case likewise obtains in two respects: the proposed name is (a) identical or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law.

On the first point, ICCPI's name is identical to that of FICCPI. ICCPI's and FICCPI's corporate names both contain the same words "Indian Chamber of Commerce." ICCPI argues that the word "Filipino" in FICCPI's corporate name makes it easily distinguishable from ICCPI.[51] It adds that confusion and

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[49] *Rollo,* p. 33.

[50] *Alhambra Cigar & Cigarette Manufacturing Co., Inc. v. Securities & Exchange Commission*, G.R. No. L-23606, July 29, 1968, 24 SCRA 269, 274.

[51] *Rollo,* p. 30.

deception are effectively precluded by appending the word "Filipino" to the phrase "Indian Chamber of Commerce."[52] Further, ICCPI claims that the corporate name of FICCPI uses the words "in the Philippines" while ICCPI uses only "Phils., Inc."[53]

ICCPI's arguments are without merit. These words do not effectively distinguish the corporate names. On the one hand, the word "Filipino" is merely a description, referring to a Filipino citizen or one living in the Philippines, to describe the corporation's members. On the other, the words "in the Philippines" and "Phils., Inc." are simply geographical locations of the corporations which, even if appended to both the corporate names, will not make one distinct from the other. Under the facts of this case, these words cannot be separated from each other such that each word can be considered to add distinction to the corporate names. Taken together, the words in the phrase "in the Philippines" and in the phrase "Phils. Inc." are synonymous — they both mean the location of the corporation.

The same principle was adopted by this Court in *Ang mga Kaanib sa Iglesia ng Dios Kay Kristo Hesus, H.S.K. sa Bansang Pilipinas, Inc. vs. Iglesia ng Dios Kay Cristo Jesus, Haligi at Suhay ng Katotohanan*:[54]

> Significantly, the only difference between the corporate names of petitioner and respondent are the words *SALIGAN* and *SUHAY*. These words are synonymous — both mean ground, foundation or support. Hence, this case is on all fours with *Universal Mills Corporation v. Universal Textile Mills, Inc.*, where the Court ruled that the corporate names Universal Mills Corporation and Universal Textile Mills, Inc., are undisputably so similar that even under the test of "reasonable care and observation" confusion may arise.[55] (Italics in the original.)

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[52] *Id.* at 31.

[53] *Id.*

[54] G.R. No. 137592, December 12, 2001, 372 SCRA 171.

[55] *Id.* at 179.

Thus, the CA is correct when it ruled, "[a]s correctly found by the SEC *en banc*, the word 'Filipino' in the corporate name of the respondent [FICCPI] is merely descriptive and can hardly serve as an effective differentiating medium necessary to avoid confusion. The other two words alluded to by petitioner [ICCPI] that allegedly distinguishes its corporate name from that of the respondent are the words 'in' and 'the' in the respondent's corporate name. To our mind, the presence of the words 'in' and 'the' in respondent's corporate name does not, in any way, make an effective distinction to that of petitioner."[56]

Petitioner cannot argue that the combination of words in respondent's corporate name is merely descriptive and generic, and consequently cannot be appropriated as a corporate name to the exclusion of the others.[57] Save for the words "Filipino," "in the," and "Inc.," the corporate names of petitioner and respondent are identical in all other respects. This issue was also discussed in the *Iglesia* case where this Court held,

> Furthermore, the wholesale appropriation by petitioner of respondent's corporate name cannot find justification under the generic word rule. We agree with the Court of Appeals' conclusion that a contrary ruling would encourage other corporations to adopt verbatim and register an existing and protected corporate name, to the detriment of the public.[58]

On the second point, ICCPI's corporate name is deceptively or confusingly similar to that of FICCPI. It is settled that to determine the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person, using ordinary care and discrimination. In so doing, the court must examine the record as well as the names themselves.[59] Proof of actual confusion need not be shown. It suffices that confusion is probably or likely to occur.[60]

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[56] *Rollo*, p. 14.

[57] *Id.* at 32.

[58] *Supra* note 54 at 179.

[59] *Supra* note 45 at 464.

[60] *Id.*

In this case, the overriding consideration in determining whether a person, using ordinary care and discrimination, might be misled is the circumstance that both ICCPI and FICCPI have a common primary purpose, that is, the promotion of Filipino-Indian business in the Philippines.

The primary purposes of ICCPI as provided in its Articles of Incorporation are:

a) Develop a stronger sense of brotherhood;
b) Enhance the prestige of the Filipino-Indian business community in the Philippines;
c) Promote cordial business relations with Filipinos and other business communities in the Philippines, and other overseas Indian business organizations;
d) Respond fully to the needs of a progressive economy and the Filipino-Indian Business community;
e) Promote and foster relations between the people and Governments of the Republics of the Philippines and India in areas of Industry, Trade, and Culture.[61]

Likewise, the primary purpose of FICCPI is "[t]o actively promote and enhance the Filipino-Indian business relationship especially in view of [current] local and global business trends."[62]

Considering these corporate purposes, the SEC *En Banc* made a finding that "[i]t is apparent that both from the standpoint of their corporate names and the purposes for which they were established, there exist a similarity that could inevitably lead to confusion."[63] This finding of the SEC *En Banc* was fully concurred with and adopted by the CA.[64]

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[61] *Rollo*, p. 117.

[62] *Id.* at 95.

[63] *Id.* at 162.

[64] *Id.* at 15. The pertinent portion of the CA decision reads:

Thus, we fully concur with the informed observation of the SEC *en banc* that, both from the standpoint of their corporate names and the purpose for which they were established, there is a similarity between the petitioner

Findings of fact of quasi-judicial agencies, like the SEC, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their consideration, and more so if the same has been upheld by the appellate court,[65] as in this case.

Petitioner cannot argue that the CA erred when it upheld the SEC *En Banc*'s decision to cancel ICCPI's corporate name.[66] By express mandate of law, the SEC has absolute jurisdiction, supervision and control over all corporations.[67] It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporation involved, but more so for the protection of the public. It has the authority to de-register at all times, and under all circumstances corporate names which in its estimation are likely to generate confusion.[68]

Pursuant to its mandate, the SEC *En Banc* correctly applied Section 18 of the Corporation Code, and Section 15 of SEC Memorandum Circular No. 14-2000:

> In implementing Section 18 of the Corporation Code of the Philippines (BP 68), the following revised guidelines in the approval of corporate and partnership names are hereby adopted for the information and guidelines of all concerned:

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and the respondent that would inevitably lead to confusion. Therefore, there is a necessity to order the petitioner to change or modify its corporate name to avoid confusion.

[65] *Nautica Canning Corporation vs. Yumul*, G.R. No. 164588, October 19, 2005, 473 SCRA 415, 423-424.

[66] *Rollo*, p. 35.

[67] Presidential Decree No. 902-A (1976), Section 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines; and in the exercise of its authority, it shall have the power to enlist the aid and support of any and all enforcement agencies of the government, civil or military.

[68] *Supra* note 47 at 259.

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15. Registrant corporations or partnership shall submit a letter undertaking to change their corporate or partnership name in case another person or firm has acquired a prior right to the use of said firm name or the same is deceptively or confusingly similar to one already registered unless this undertaking is already included as one of theeh provisions of the articles of incorporation or partnership of the registrant.

Finding merit in respondent's claims, the SEC *En Banc* merely compelled respondent petitioner to comply with its undertaking.[69]

WHEREFORE, the petition is **DENIED**. The Decision of the CA dated May 15, 2008 in CA-G.R. SP No. 97320 is hereby **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 185369. August 3, 2016]

J. TOBIAS M. JAVIER and VINCENT H. PICCIO III, *petitioners, vs.* **RHODORA J. CADIAO, ALFONSO V. COMBONG, JR., BENJAMIN E. JUANITAS, CALIXTO G. ZALDIVAR III, DANTE M. BERIONG, FERNANDO C. CORVERA, HECTOR L. FRANGUE and KENNY S. OLANDRES**, *respondents.*

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[69] *Rollo,* p. 16.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; VICE GOVERNOR; AS THE PRESIDING OFFICER OF THE *SANGGUNIANG PANLALAWIGAN*, THE VICE GOVERNOR SHOULD BE COUNTED FOR PURPOSES OF ASCERTAINING THE EXISTENCE OF A QUORUM, BUT NOT IN THE DETERMINATION OF THE REQUIRED NUMBER OF VOTES NECESSARY TO UPHOLD A MATTER BEFORE THE *SANGGUNIANG PANLALAWIGAN*.— [T]he Vice Governor forms part of the composition of the SP as its Presiding Officer, and should be counted in the determination of the existence of a quorum. However, the nature of the position of the Presiding Officer as a component of the SP is distinct from the other members comprising the said body. Section 41 of the LGC provides the manner through which the SP members are elected. The Vice Governor is elected *at large;* hence, holds the mandate of the entire body politic. In contrast thereto, the regular SP members are elected *by district.* They hold the mandate of a specific constituency within the body politic. On the other hand, the *ex-officio* SP members represent their respective groups. Consequently, the regular and *ex-officio* SP members enjoy full rights of participation, which include debating and voting, all exercised in pursuit of championing the interests of their respective constituencies. The Vice Governor, however, does not represent any particular group. As a Presiding Officer, his or her mandate is to ensure that the SP effectively conducts its business for the general welfare of the entire province. Logically then, the Vice Governor should be the *embodiment of impartiality.* As the Presiding Officer of the SP, he or she is without liberty to readily take sides, or to cast a vote to every question put upon the body. It follows then that the law cannot reasonably require that the Vice Governor be included in the determination of the required number of votes necessary to resolve a matter every time the SP votes on an issue. It bears stressing though that while the Vice Governor does not enjoy full rights of participation in the floors of the SP, as the holder of the body politic's general mandate, the power to render conclusion to an issue when there is a deadlock, pertains to him or her. Thus, Section 49 of the LGC is explicit that "the presiding officer shall vote only to break a tie." x x x [T]he

Vice Governor, as the SP's Presiding Officer, should be counted for purposes of ascertaining the existence of a quorum, but not in the determination of the required number of votes necessary to uphold a matter before the SP.

APPEARANCES OF COUNSEL

J. Tobias M. Javier, Counsel Pro Se & for other petitioners.
Hilmar R. Pecaoco for respondents.

R E S O L U T I O N

REYES, *J.*:

Should the Vice Governor, as the presiding officer of the *Sangguniang Panlalawigan*, be counted in the determination of what number constitutes as the majority?

Before the Court is the Petition for Review on *Certiorari*[1] assailing the Order[2] issued on August 7, 2008 by the Regional Trial Court (RTC) of San Jose, Antique, Branch 12, in Civil Case No. 08-02-3645, which upheld the validity of the passage of Resolution No. 42-2008 by the *Sangguniang Panlalawigan* of Antique (SP). The said resolution sought the reorganization then of the standing committees of the SP.

The Facts

For the years 2007 to 2010, one of the herein respondents, Vice Governor Rhodora J. Cadiao (Vice Governor Cadiao), was the presiding officer of the SP.

On the first regular session of the SP held on July 5, 2007, the Lakas ng Tao-Christian Muslim Democrats (Lakas-CMD) block was considered as the majority party. Among those who belonged to the said party were J. Tobias M. Javier (Javier),

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[1] *Rollo*, pp. 8-31.

[2] Issued by Judge Rudy P. Castrojas; *id*. at 93-105.

Vincent H. Piccio III (Piccio) (collectively, the petitioners), Vice Governor Cadiao and SP member Benjamin E. Juanitas (Juanitas). Piccio was designated as the Majority Floor Leader.[3]

On the other hand, the Nationalist People's Coalition (NPC) was considered as the minority party with four members, including the herein respondent, Alfonso V. Combong, Jr. (Combong). However, another SP member, who won as an independent candidate, allied with the NPC.[4]

Additionally, the SP has three *ex-officio* members: the President of the Councilors' League of Antique, the President of the Association of Barangay Captains, and the President of the *Sangguniang Kabataan* Federation.[5]

Thereafter, for personal reasons, Juanitas left the majority party and joined the NPC, which was then headed by Combong. Vice Governor Cadiao followed suit. Subsequently realizing that the NPC had gained superiority in numbers, Combong proposed Resolution No. 42-2008 (Combong Resolution), which sought to reorganize the standing committees of the SP. The resolution was included as an "urgent matter" in the agenda[6] of the SP's fifth regular session.[7]

During the SP's fifth regular session held on February 7, 2008, all the SP members were in attendance. Amidst fiery arguments, the Combong Resolution was approved with seven (7) voting in its favor, and six (6) against it. Consequently, Piccio was replaced by Juanitas as Majority Floor Leader. Some of the Lakas-CMD members were also divested of chairmanship or membership in the SP's standing committees.[8]

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[3] *Id*. at 94.

[4] *Id*.

[5] *Id*.

[6] *Id*. at 73-76.

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

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

To challenge the legality of the passage of the Combong Resolution, the Lakas-CMD block, composed of Javier, Piccio, Rosie A. Dimamay, Errol T. Santillan, Edgar D. Denosta and Carlos M. Palacios (plaintiffs), filed before the RTC a *Complaint for Injunction with Urgent Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Injunction*.[9] They maintained that for having been considered as an "urgent matter," the passage of the Combong Resolution required an affirmative vote of two-thirds (2/3) of all the members present pursuant to Section 62, paragraph (2),[10] Rule XVI (Urgent Matters), Internal Rules of Procedure (IRP) of the SP. Accordingly, since all 14 members of the SP were present during the deliberations, nine (9) affirmative votes were necessary.[11]

The Lakas-CMD block also cited Article 107(g)[12] of the Implementing Rules and Regulations (IRR) of the Local Government Code (LGC) and the legal opinions of the Department of Interior and Local Government (DILG) to argue that at the least, eight (8) affirmative votes, corresponding to

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

[10] Sec. 62. *Urgent Matters*. – No item can be considered as urgent matter and no member can be recognized to present it unless the Presiding Officer and the Majority Floor Leader are informed about it before the session.

No item can be approved in the period of urgent matters unless with the affirmative vote of two-thirds (2/3) of the members present.

A matter that will only be referred to a committee cannot be included as an urgent matter.

x x x x x x x x x

Id. at 67. (Emphasis ours)

[11] *Rollo*, p. 38.

[12] Art. 107. *Ordinances and Resolutions*. — The following rules shall govern the enactment of ordinances and resolutions:

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(g) No ordinance or resolution passed by the sanggunian in a regular or special session duly called for the purpose shall be valid unless approved by a majority of the members present, there being a quorum. x x x.

x x x x x x x x x

a simple majority, were needed to validly pass the Combong Resolution. All fourteen (14) members of the SP, including Vice Governor Cadiao, as the presiding officer, were present during the session. That being the case, the simple majority was half of 14 plus 1.[13]

Ultimately, the complaint's objective was for the court to order the members of the Lakas-CMD be restored to their chairmanship or membership in the SP committees.

In their Answer, Vice Governor Cadiao, Combong, Juanitas, Calixto G. Zaldivar III, Dante M. Beriong, Fernando C. Corvera, Hector L. Frangue and Kenny S. Olandres (respondents) contended that the RTC lacked jurisdiction over the complaint. Further, an injunctive relief can no longer be issued since the SP's reorganization was already a consummated act. The respondents likewise insisted that the Combong Resolution was legally approved and the Lakas-CMD block had not suffered any grave or irreparable damage consequent to its passage.[14]

Ruling of the RTC

On August 7, 2008, the RTC issued the herein assailed Order,[15] upholding the validity of the passage of the Combong Resolution and dismissing the complaint of the Lakas-CMD block. The *fallo* of the order reads:

> PREMISES CONSIDERED, the instant petition of the plaintiffs is hereby **dismissed** for lack of merit.
>
> Costs de oficio.
>
> SO ORDERED.[16]

The RTC declared that legislative rules, including those observed by the SP in the instant case, were not permanent.

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[13] *Rollo*, pp. 38-40.

[14] *Id*. at 96.

[15] *Id*. at 93-105.

[16] *Id*. at 105.

Moreover, the courts may not intervene in the legislature's internal affairs. Despite the foregoing pronouncement, the RTC took cognizance of the plaintiffs' complaint on the basis of the allegation that the Combong Resolution was deliberated and passed upon *sans* a majority vote, hence, violative of Article 107(g), IRR of the LGC.[17]

The RTC explained that in determining the validity of the passage of the Combong Resolution, Section 67, Rule XVIII (Voting), IRP of the SP should be applied.[18] It states:

> Sec. 67. **Manner of Voting.** – The Presiding Officer shall put the question, saying "As many as are in favor of (as the question may be)[,] raise your hand[s]," and after the affirmative vote is counted, "as many as are opposed[,] also raised (sic) your hand[s]."
>
> Unless otherwise provided by these Rules, **a majority of those voting**, there being a quorum, shall decide the issue.
>
> An abstention shall not be counted as a vote, in determining the majority vote, only the number of those who voted shall be considered. Abstentions are excluded. So even if most of the members present abstained, this will not affect the result as the only thing to be determined is which of the affirmative and negative vote has the bigger number.
>
> Only the number voting on each side, and not the names of the members, shall be indicated in the minutes.[19] (Emphasis ours)

The RTC, thus, opined that the presence of Vice Governor Cadiao should not be considered in the determination of what number constitutes as the majority.[20]

When the Combong Resolution was passed, 14 were present, to wit, 13 SP members and Vice Governor Cadiao. The 13 SP members voted, with seven (7) voting for and six

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[17] *Id*. at 98.

[18] *Id*. at 101-103.

[19] *Id*. at 68.

[20] *Id*. at 104.

(6) against the Combong Resolution. A majority was already obtained; hence, there was no need for Vice Governor Cadiao's vote as there was no tie to break. The proceedings took place in accordance with Section 49[21] of the LGC, Article 102,[22] IRR of the LGC, and Section 67, IRP of the SP.

The RTC likewise stressed that Sections 11,[23] 21,[24]

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[21] Sec. 49. *Presiding Officer.* –

(a) The vice-governor shall be the presiding officer of the sangguniang panlalawigan; the city vice-mayor, of the sangguniang panlungsod; the municipal vice-mayor, of the sangguniang bayan; and the punong barangay, of the sangguniang barangay. The presiding officer shall vote only to break a tie.

x x x x x x x x x

[22] Art. 102. *Presiding Officer.* — (a) The vice governor shall be the presiding officer of the sangguniang panlalawigan; the city vice mayor, of the sangguniang panlungsod; the municipal vice mayor, of the sangguniang bayan; and the punong barangay, of the sangguniang barangay.

b) The presiding officer shall vote only to break a tie.

x x x x

[23] Sec. 11. *Selection and Transfer of Local Government Site, Offices and Facilities.* –

x x x x x x x x x

(b) When conditions and developments in the local government unit concerned have significantly changed subsequent to the establishment of the seat of government, its Sanggunian may, after public hearing and by a vote of two-thirds (2/3) of all its members, transfer the same to a site better suited to its needs. Provided, however, That no such transfer shall be made outside the territorial boundaries of the local government unit concerned.

x x x x x x x x x x
(Underscoring ours)

[24] Sec. 21. *Closure and Opening of Roads.* –

(a) A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction: Provided, however, That in case of permanent closure, such ordinance must be approved by at least two-thirds (2/3) of all the members of the Sanggunian, and when necessary, an adequate substitute for the public facility that is subject to closure is provided.

x x x x x x x x x x
(Underscoring ours)

50(5)[25] and 54(a)[26] of the LGC particularly provide the instances where two-thirds (2/3) votes are required from the SP. Nothing is mentioned in the LGC anent "urgent matters." Section 62, paragraph (2), IRP of the SP cannot rise above its source and impose more stringent standards than what the LGC itself necessitates.

The RTC concluded that the plaintiffs suffered no grave or irreparable injury from the passage of the Combong Resolution.

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[25] Sec. 50. *Internal Rules of Procedure*. –

(a) On the first regular session following the election of its members and within ninety (90) days thereafter, the sanggunian concerned shall adopt or update its existing rules of procedure.

(b) The rules of procedure shall provide for the following:

x x x x x x x x x

(5) The discipline of members for disorderly behavior and absences without justifiable cause for four (4) consecutive sessions, for which they may be censured, reprimanded, or excluded from the session, suspended for not more than sixty (60) days, or expelled: Provided, That the penalty of suspension or expulsion shall require the concurrence of at least two-thirds (2/3) vote of all the sanggunian members: Provided, further, That a member convicted by final judgment to imprisonment of at least one (1) year for any crime involving moral turpitude shall be automatically expelled from the sanggunian; and

x x x x x x x x x

[26] Sec. 54. *Approval of Ordinances*. –

(a) Every ordinance enacted by the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan shall be presented to the provincial governor or city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the sanggunian, which may proceed to reconsider the same. The sanggunian concerned may override the veto of the local chief executive by two-thirds (2/3) vote of all its members, thereby making the ordinance or resolution effective for all legal intents and purposes.

x x x x x x x x x

(Underscoring ours)

Members of the Lakas-CMD were not prevented from performing their duties as SP members. They were even designated as chairmen or members of some committees.[27]

The plaintiffs filed a Motion for Reconsideration,[28] which the RTC denied in its Resolution[29] dated November 17, 2008.

Issues

The instant petition ascribes errors[30] upon the RTC in:

(1) ruling that the required majority in a 14-member SP should be seven (7) pursuant to the provision of Section 67 of the IRP, which in effect contravenes Article 107(g), IRR of the LGC;[31]

(2) holding that a Vice Governor, who belongs more to the executive branch of the government, should be excluded from the base number in determining what constitutes as the majority;[32]

(3) failing to apply the two-thirds (2/3)-vote requirement for matters considered as "urgent" under Section 62, Rule XVI, IRP of the SP;[33]

(4) disregarding pertinent executive pronouncements or opinions of the DILG on the matter at hand;[34] and

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[27] *Rollo*, p. 104.

[28] *Id*. at 106-119.

[29] *Id*. at 123-130.

[30] *Id*. at 15-16.

[31] *Id*. at 16.

[32] *Id*. at 21.

[33] *Id*. at 24.

[34] *Id*. at 26.

(5) failing to rule that the Combong Resolution violates Sections 5[35] and 6(a),[36] Rule III, IRP of the SP.[37]

The petitioners point out that Article 107(g), IRR of the LGC refers to "a majority of all the members present, there being a quorum."[38] Section 67, IRP of the SP, on the other hand, speaks of "a majority of all the members actually voting, there being a quorum."[39] The petitioners posit that what should prevail is the LGC, which requires a majority of eight votes from the SP with 14 members. That being the rule, the Combong Resolution, was not validly passed.[40]

Further, Section 467(a) of the LGC partially provides that the SP "shall be composed of the provincial vice governor as presiding officer, the regular *sanggunian* members x x x." Hence, in *Gamboa, Jr. v. Aguirre, Jr.*,[41] the Court ruled that the Vice Governor is a member of the SP.[42]

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[35] Sec. 5. *Designation.* – The member who received the highest percentage of votes among those belonging to the Majority Party shall be the Majority Floor Leader.

This is determined by taking the percentage of the votes received by the member in relation to the total number of registered voters in the municipal district where he is elected.

The next highest ranking member belonging to the Majority Party, as determined on the same basis, shall be the Assistant Majority Floor Leader.

[36] Sec. 6. *Duties and Powers.*

(a) The Majority Floor Leader shall be the Chairman of the Committee on Rules and the Assistant Majority Floor Leader shall be the Vice-Chairman, with the chairmen of the different committees as members.

x x x x x x x x x

[37] *Rollo*, p. 28.

[38] *Id.* at 18.

[39] *Id.*

[40] *Id.* at 18-19 and 26.

[41] 369 Phil. 1133 (1999).

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

The petitioners also invoke Section 50 of the LGC, which gives the SP "latitude to promulgate its own rules of procedure governing its organization, legislative process, parliamentary procedures, calendar of business, committees and their memberships provided they are not inconsistent with or in violation of the Constitution, the LGC and its [IRR,] and other existing laws and regulations."[43]

The LGC is silent as to what constitutes as "urgent matters," in relation to which the three-reading rule may be dispensed with. Section 62, IRP of the SP dealt with "urgent matters" and imposed the more stringent two-thirds (2/3) affirmative vote requirement. While admittedly, the LGC has specifically enumerated situations requiring two-thirds (2/3) votes, there is nothing in the law suggesting that the list is exclusive.[44]

Moreover, in DILG Opinion No. 6, series of 2001, dated February 12, 2001, it is clear that if a session is attended by all 14 members, including the Vice Governor, eight (8) votes constitute a quorum.[45]

Finally, the petitioners aver that Juanitas, who received the least number of votes among the SP members, cannot be designated as the Majority Floor Leader without violating Sections 5 and 6(a), Rule III (The Majority Floor Leader), IRP of the SP.[46]

In the respondents' Comment,[47] they contend that the Vice Governor is the SP's Presiding Officer, but that does not make him a regular member thereof.[48] Further, the LGC lists instances when a vote of two-thirds (2/3) is required and no mention is

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[43] *Id*. at 25.

[44] *Id*. at 24-26.

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

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

[47] *Id*. at 200-213.

[48] *Id*. at 207.

made of "urgent matters." Thus, what the law does not include, it excludes. The respondents also reiterate that the person designated as the Majority Floor Leader, cannot permanently hold on to the position. Political affiliations and alliances affect the designations.[49]

Ruling of the Court

The instant petition fails.

Procedurally, the petition is outrightly dismissible for being moot and academic. The terms of office of the contending parties had already ended in June of 2010. There is no more substantial relief which can be gained by the petitioners, or which would be negated by the dismissal of the case.[50]

However, by reason of the public interest involved, the Court shall take exception of the case and still address the first, second and fourth issues raised herein for the bench, bar and public's guidance.[51]

The Vice Governor, as the Presiding Officer, shall be considered a part of the SP for purposes of ascertaining if a quorum exists. In determining the number which constitutes as the majority vote, the Vice Governor is excluded. The Vice Governor's right to vote is merely contingent and arises only when there is a tie to break.

The *first, second and fourth issues* raised by the petitioners are interrelated, hence, shall be resolved jointly. Restated, the

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[49] *Id.* at 209-210.

[50] Please *see Ilusorio v. Baguio Country Club Corporation,* G.R. No. 179571, July 2, 2014, 728 SCRA 592, 598.

[51] Please *see Funa v. Manila Economic and Cultural Office, et al.*, 726 Phil. 63, 81 (2014).

issue is whether or not the Vice Governor, as the presiding officer of the SP, shall be counted in the determination of what number constitutes as the majority.

In *La Carlota City, Negros Occidental, et al. v. Atty. Rojo*,[52] the Court interpreted a provision pertaining to the composition of the *Sangguniang Panlungsod*, *viz.*:

> Section 457. ***Composition*. (a) The *sangguniang panlungsod*, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular s*anggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members.**
>
> x x x x x x x x x
>
> R.A. 7160 clearly states that the *Sangguniang Panlungsod* "**shall be composed of the city vice-mayor as presiding officer**, the regular *sanggunian* members, the president of the city chapter of the *liga ng mga barangay*, the president of the *panlungsod na pederasyon ng mga sangguniang kabataan*, and the sectoral representatives, as members." Black's Law Dictionary defines "composed of" as "**formed of**" or "**consisting of**." As the presiding officer, the vice-mayor can vote only to break a tie. In effect, the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a "member" of the *Sangguniang Panlungsod* considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a *Sanggunian* session is not considered a "member" of the *Sanggunian*.[53] (Underlining ours and emphasis in the original)

It can, thus, be concluded that the Vice Governor forms part of the composition of the SP as its Presiding Officer, and should be counted in the determination of the existence of a quorum. However, the nature of the position of the Presiding Officer as

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[52] 686 Phil. 477 (2012).

[53] *Id.* at 494-495.

a component of the SP is distinct from the other members comprising the said body.

Section 41[54] of the LGC provides the manner through which the SP members are elected. The Vice Governor is elected *at large*; hence, holds the mandate of the entire body politic. In contrast thereto, the regular SP members are elected *by district*. They hold the mandate of a specific constituency within the body politic. On the other hand, the *ex-officio* SP members represent their respective groups.

Consequently, the regular and *ex-officio* SP members enjoy full rights of participation, which include debating and voting, all exercised in pursuit of championing the interests of their respective constituencies. The Vice Governor, however, does not represent any particular group. As a Presiding Officer, his or her mandate is to ensure that the SP effectively conducts its business for the general welfare of the entire province. Logically

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[54] Sec. 41. *Manner of Election*. –

(a) The governor, **vice-governor**, city mayor, city vice-mayor, municipal mayor, municipal vice-mayor, and punong barangay **shall be elected at large in their respective units by the qualified voters therein**. However, the sangguniang kabataan chairman for each barangay shall be elected by the registered voters of the katipunan ng kabataan, as provided in this Code.

(b) The **regular members of the sangguniang panlalawigan**, sangguniang panlungsod, and sangguniang bayan **shall be elected by district,** as may be provided for by law. Sangguniang barangay members shall be elected at large. The presidents of the leagues of sanggunian members of component cities and municipalities shall serve as ex officio members of the sangguniang panlalawigan concerned. The presidents of the "liga ng mga barangay and the pederasyon ng mga sangguniang kabataan" elected by their respective chapters, as provided in this Code, shall serve as ex officio members of the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan.

(c) In addition thereto, there shall be one (1) sectoral representative from the women, one (1) from the workers, and one (1) from any of the following sectors: the urban poor, indigenous cultural communities, disabled persons, or any other sector as may be determined by the sanggunian concerned within ninety (90) days prior to the holding of the next local elections as may be provided for by law. The COMELEC shall promulgate the rules and regulations to effectively provide for the election of such sectoral representatives. (Emphasis ours)

then, the Vice Governor should be the *embodiment of impartiality*. As the Presiding Officer of the SP, he or she is without liberty to readily take sides, or to cast a vote to every question put upon the body. It follows then that the law cannot reasonably require that the Vice Governor be included in the determination of the required number of votes necessary to resolve a matter every time the SP votes on an issue. It bears stressing though that while the Vice Governor does not enjoy full rights of participation in the floors of the SP, as the holder of the body politic's general mandate, the power to render conclusion to an issue when there is a deadlock, pertains to him or her. Thus, Section 49 of the LGC is explicit that "the presiding officer shall vote only to break a tie."

Associate Justice Arturo D. Brion's concurring opinion in *La Carlota*[55] is illuminating, *viz.*:

> If the voting level required would engage the ***entirety*** of the *sanggunian* as a collegial body, making the quorum requirement least significant, there is no rhyme or reason to include the presiding officer's personality at all. The possibility of that one instance where he may be allowed to vote is nil. To include him in *sanggunian* membership without this qualification would adversely affect the statutory rule that generally prohibits him from voting.
>
> To illustrate, in disciplining members of the *sanggunian* where the penalty involved is suspension or expulsion, the LGC requires the concurrence of two-thirds (2/3) of all the members of the *sanggunian*. If the Sanggunian has thirteen (13) regular members (excluding the presiding officer), the votes needed to impose either of the penalty is eight. However, should the presiding officer be also included, therefore raising the membership to fourteen (14), – on the premise that he is also *sanggunian* member – even if he cannot vote in this instance, an additional one vote is required – i.e., nine votes are required – before the penalty is imposed. The presiding officer's innocuous inclusion as *sanggunian* member negatively impacts on the prohibition against him from voting since his mere inclusion affects the numerical value of the required voting level on

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[55] *Supra* note 52.

a matter where generally and by law he has no concern."[56] (Citation omitted and underscoring ours)

In the instant petition, when the Combong Resolution was deliberated upon, all the ten (10) regular and three (3) *ex-officio* members, plus the Presiding Officer, were present. Seven members voted for, while six voted against the Combong Resolution. There was no tie to break as the majority vote had already been obtained.

To hold that the Presiding Officer should be counted in determining the required number of votes necessary to uphold a matter before the SP shall be counter-productive. It would admit deadlocks as ordinary incidents in the conduct of business of the SP, which in effect incapacitates the said body from addressing every issue laid before it. In the process, the SP's responsiveness, effectivity and accountability towards the affairs of the body politic would be diminished.[57]

Verily, the Vice Governor, as the SP's Presiding Officer, should be counted for purposes of ascertaining the existence of a quorum, but not in the determination of the required number of votes necessary to uphold a matter before the SP.

Other Matters

While the petitioners raise other issues pertaining to alleged violations by the respondents of the SP's IRP, the Court deems it proper not to resolve them anymore. Again, the Court reiterates that the instant petition has been rendered moot by the termination of the contending parties' tenure in June of 2010. Further, it is beyond the Court's province to declare a legislative act as invalid solely for non-compliance with internal rules.[58]

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[56] *Id.* at 516-517.

[57] Please *see* 1987 CONSTITUTION, Article X, Section 3; *Pimentel, Jr. v. Hon. Aguirre*, 391 Phil. 84 (2000).

[58] *Arroyo v. De Venecia*, 353 Phil. 623, 630 (1998).

WHEREFORE, the petition is hereby **DENIED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 187822-23. August 3, 2016]

EVER ELECTRICAL MANUFACTURING, INC., VICENTE C. GO and GEORGE C. GO, *petitioners, vs.* **PHILIPPINE BANK OF COMMUNICATIONS (PBCOM), represented by its Vice-President, MR. DOMINGO S. AURE**, *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.—** The Court is not a trier of facts. In *Spouses Bernales v. Heirs of Julian Sambaan,* the Court reiterated that for a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts. On the other hand, there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts.

2. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF CONTRACTS; NOVATION; REQUISITES.—** Under the Civil Code, novation is one of the means to extinguish an obligation. This is done either by changing the object or principal conditions, by

substituting the person of the debtor, or by subrogating a third person in the rights of the creditor. It is a relative extinguishment since a new obligation is created in lieu of the old obligation. The following requisites must be met for novation to take place: (1) There must be a previous valid obligation; (2) There must be an agreement of the parties concerned to a new contract; (3) There must be the extinguishment of the old contract; and (4) There must be the validity of the new contract.

3. ID.; ID.; ID.; ID.; ID.; FOR A CONTRACT TO BE CONSIDERED NOVATED, IT MUST BE ESTABLISHED THAT THE OLD AND NEW CONTRACTS ARE INCOMPATIBLE ON ALL POINTS, OR THAT THE WILL TO NOVATE APPEAR BY EXPRESS AGREEMENT OF THE PARTIES OR ACTS OF EQUIVALENT IMPORT.— [N]ovation is never presumed. x x x It must be established that the old and new contracts are incompatible on all points, or that the will to novate appear by express agreement of the parties or acts of equivalent import. In the absence of an express provision, a contract may still be considered novated impliedly if it passes the test of incompatibility, that is, whether the contracts can stand together, each one having an independent existence.

4. ID.; ID.; ID.; ID.; ID.; THE MERE ACT OF ADDING ANOTHER PERSON TO BE PERSONALLY LIABLE DOES NOT CONSTITUTE NOVATION IF THERE IS NO AGREEMENT TO RELEASE THE ORIGINAL DEBTOR FROM ITS RESPONSIBILITY.— As stated in Article 1291, novation may also be brought about by a change in the person of the debtor. x x x In the present case, the compromise agreement entered into by the parties does not contain any provision releasing Ever (the debtor) from its liability to PBCom (the lender). x x x Under the terms of the agreement, Vicente is an additional person who would ensure that the loan of Ever to PBCom would be paid. Under the rules of novation, the mere act of adding another person to be personally liable, who in this case is Vicente, did not constitute novation since there was no agreement to release Ever from its responsibility to PBCom. Thus, absent the release of Ever from the original obligation, PBCom may still enforce the obligation against it. Since there was no novation, PBCom may proceed to collect from the original debtor, Ever, under the terms of the original

loan agreement. The Court holds that there was no irregularity in the issuance of the writ of execution, levy on the properties and the subsequent sale of the auction sale.

APPEARANCES OF COUNSEL

Vicente H. Reyes & Ruperto N. Listana for petitioners.
M.Z. Bañaga, Jr. & Associates for respondent *PBCom.*

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Ever Electrical Manufacturing, Inc. (Ever), its President Vicente Go (Vicente) and Board Director George Go (collectively, the petitioners) questioning the Decision[2] dated November 28, 2008 and Resolution[3] dated May 6, 2009 of the Court of Appeals (CA) in CA-G.R. SP Nos. 84631 and 87444.

Antecedent Facts

Ever is a duly organized domestic corporation with a history of transacting with respondent Philippine Bank of Communications (PBCom), a domestic commercial bank.[4] The parties had been involved in litigation for collection of a sum of money where PBCom was able to get a favorable Partial Judgment[5] dated July 23, 2001 issued by the Regional Trial Court (RTC) of Manila, Branch 24, in Civil Case No. 01-100899.

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[1] *Rollo*, pp. 4-32.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr. concurring; *id*. at 147-155.

[3] *Id*. at 157-158.

[4] *Id*. at 5.

[5] Rendered by Judge Antonio M. Eugenio, Jr.; records, Vol. I, pp. 145-150.

On December 13, 2002, Ever, represented by Vicente, took out a loan from PBCom in the amount of ₱65,000,000.00 for its working capital.[6] As security, Ever mortgaged two parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-61475 and T-61476 with areas of 10,025 square meters and 9,117 sq m, respectively, located at National Road, Barangay Makiling, Calamba, Laguna.[7] On December 27, 2002, Ever executed Promissory Note No. 8200013327,[8] which stated that the loan had a maturity date of December 27, 2010, and an interest rate of 8.5937% *per annum* for 10 years.

On February 14, 2003, the parties entered into a compromise agreement whereby Vicente voluntarily undertook to pay for Ever's loan with PBCom. Under the terms of the compromise

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[6] The Loan Approval letter reads:

Gentlemen:

We are pleased to advise the approval of the following facility in your favor the availability of which is subject to the Bank's discretion and perfection of securing documentation.

I. Amount	Terms and Conditions	
₱65,000,000.00	Partially Secured Term Loan	
	Purpose	: To finance personal working capital requirements
	Tenor	: Eight (8) years
	Repayment on Principal	: **1. Equal semi-annual principal payments** amounting to **₱625,000.00 for the first two years** to commence at the end of the second quarter.
		2. Balance after 2nd year in equal quarterly payments starting the end of the 27th month until full payment of the loan.

x x x; CA *rollo* (CA-G.R. SP No. 84631), pp. 37-38, at 37. (Emphasis ours)

[7] *Id*.

[8] *Rollo*, pp. 36-39.

agreement, Vicente would make partial payments as stated in the promissory note with a caveat that any failure on his part to pay the installment due would make the whole amount immediately demandable. The compromise agreement reads as follows:

> WHEREAS, [**VICENTE] has offered to assume full liability and to undertake the full payment of all the past due accounts of [EVER]** and to exempt from any and all obligations/ liabilities his co-defendants-sureties GEORGE C. GO and NG MENG TAM arising from and subject of the above-captioned litigation, without prejudice to the right of [**VICENTE**] to avail himself of his right for reimbursement under ***Art. 1236 of the Civil Code of the Philippines***;
>
> WHEREAS, [PBCom] has agreed and accepted [VICENTE's] aforementioned offer to pay, in accordance with the terms and conditions of the Promissory Note 8200013327 dated 27 Dec. 2002, copy of which is hereto attached as **Annex "A"** hereof.
>
> WHEREAS, [VICENTE] fully understands that **failure on his part to make partial payments** of the amount due under the said Promissory Note **shall make the whole balance of the unpaid amounts due and demandable,** less the amounts actually paid on account, **without any necessity of notice to him** and **[PBCom] shall be entitled to the issuance of the corresponding writ of execution** for the full amounts due as specified in the prayer of the above-mentioned complaint.[9] (Emphasis ours)

On February 21, 2003, the RTC approved the compromise agreement.[10] Consequently, the loan was restructured.

However, Vicente was not able to make the necessary payments as stipulated in the compromise agreement. PBCom, thus, filed with the RTC a motion for execution. PBCom alleged that Vicente violated the terms of the compromise agreement for non-payment of installments from September to December

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[9] *Id.* at 33.

[10] Records, Vol. III, pp. 432-433.

2003 and the first quarter of 2004. It prayed that a writ of execution be issued per the terms of the compromise agreement.[11]

Ruling of the RTC

On May 4, 2004, the RTC found merit in PBCom's application for a writ of execution and granted the same.[12] A writ of execution[13] dated May 14, 2004 was thereby issued. The petitioners moved for reconsideration.[14]

Thereafter, on May 19, 2004, a Notice of Levy upon Realty[15] was issued by the Deputy Sheriff to the Register of Deeds (RD) of Calamba, Laguna. He informed the RD that the properties described under TCT Nos. T-61475 and T-61476 were under *custodia legis* and thus requested that the proper annotations be made in the Book of the RD.

On June 9, 2004, the RTC denied the petitioners' motion for reconsideration. It found that while the petitioners did in fact make some payments, these were not in accord with the clear terms of the compromise agreement which required quarterly payments for a specific amount.[16]

On June 11, 2004, the Sheriff issued a Notice of Sale and scheduled the public auction on July 14, 2004 for the parcels of land.[17] Due to some postponements, public auction was actually held on September 16, 2004 where PBCom won as the highest bidder.[18]

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[11] *Id.* at 519-521.

[12] CA *rollo* (CA-G.R. SP No. 87444), pp. 44-45.

[13] *Id.* at 46-48.

[14] Records, Vol. III, pp. 559-568.

[15] CA *rollo* (CA-G.R. SP No. 87444), pp. 49-50.

[16] Records, Vol. III, pp. 630-631.

[17] CA *rollo* (CA-G.R. SP No. 84631), pp. 145-147.

[18] *See* Sheriff's Minutes of Sale, records, Vol. II, p. 206, and Sheriff's Certificate of Sale, pp. 207-208.

Ruling of the CA

The petitioners then filed with the CA two petitions for *certiorari*[19] questioning the validity of the writ of execution, levy on execution and the auction sale. The petitions were consolidated.[20]

While the case was pending, TCT Nos. 61475 and 61476 were cancelled and TCT Nos. 060-2012023698 and 060-2012023699 were issued by the RD of Calamba, Laguna, in favor of Star Asset Management NPL, Inc. The pendency of the instant case was annotated at the back of the new titles.[21]

In the Decision[22] dated November 28, 2008, the CA dismissed the petitions for lack of merit after finding that the evidence supported the conclusion of the RTC that Vicente failed to make installment payments for the period covering January 21, 2004 to March 31, 2004 in direct contravention of the terms of the compromise agreement. The liability amounted to ₱1,125,000.00 including interests and penalty charges. The CA stated that the petitioners did not deny the allegation, and merely asserted that Vicente made payments for the period of April 2, 2003 to January 20, 2004. Since Vicente defaulted in the payments and under the terms of the compromise agreement to which he agreed, the immediate issuance of a writ of execution was in order.

The CA also found no merit with the petitioners' contention that the writ of execution was not valid on the ground

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[19] Docketed as CA-G.R. SP Nos. 84631 and 87444; CA *rollo* (CA-G.R. SP No. 84631), pp. 2-31 and CA *rollo* (CA-G.R. SP No. 87444), pp. 2-30.

[20] CA Thirteenth Division Resolution dated July 28, 2005, CA *rollo* (CA-G.R. SP No. 84631), pp. 558-560 and CA Former Fourteenth Division Resolution dated June 15, 2005, CA *rollo* (CA-G.R. SP No. 87444), pp. 217-220.

[21] *See* the petitioners' Motion to Restore Possession; *rollo,* pp. 225-228, at 226.

[22] *Id.* at 147-155.

that it was issued against the properties of Ever and not against Vicente who assumed sole responsibility for the payment of the loan. The compromise agreement specifically stated that in the event that Vicente failed to comply with the terms of the compromise agreement, execution would revert to the full amounts in the complaint. Since the writ of execution was valid, the notice of levy and the levy on execution, as well as the public auction, were also valid and binding on the parties. The CA, thus, ruled that the RTC did not commit any grave abuse of discretion. The dispositive portion of the decision reads:

WHEREFORE, the *Consolidated Petition for Certiorari* is hereby **DISMISSED**.

SO ORDERED.[23]

Vicente moved for reconsideration but it was denied in a Resolution[24] dated May 6, 2009.

Hence, this petition.

The petitioners assert that Vicente had faithfully complied with the terms of the compromise agreement. The petitioners argue that the writ of execution had been issued prematurely on two points: 1) that Vicente did not violate the terms of the compromise agreement; and 2) that the compromise agreement effectively novated the original contract pursuant to Article 1293 of the Civil Code.

Vicente further states that PBCom's application for the issuance of a writ of execution on March 26, 2004 was premature since amortizations for the first quarter of 2004 were not yet due and demandable, as these were still due on March 31, 2004.[25]

More importantly, Vicente argues that the writ of execution was erroneously issued against Ever. He alleges that the Partial

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[23] *Id*. at 154.

[24] *Id*. at 157-158.

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

Judgment dated July 23, 2001 of the RTC was novated by the compromise agreement. As a consequence, Ever's obligation to PBCom was already extinguished as it was substituted by Vicente when he assumed full responsibility of the loan repayment. Under Article 1293 of the Civil Code, Ever had been substituted by Vicente thus novating the obligation.[26]

For its part, PBCom maintains that the writ of execution was valid. It reiterates that Vicente had defaulted in the payment of the quarterly installment, comprising the principal, interests and penalty amounting to ₱1,125,000.00 for the period of September 30, 2003 to December 31, 2003. Vicente once again defaulted paying the installment for the period of December 31, 2003 to March 31, 2004. With the petitioner's failure to abide by the terms of the compromise agreement, the whole balance of the obligation became immediately due and demandable.[27]

With respect to the petitioners' claim that the writ of execution was directed at the wrong party, PBCom stressed that the compromise agreement is clear that upon the failure of Vicente to make installment payments, the bank is entitled to "the issuance of the corresponding writ of execution for the full amounts due as specified in the prayer of the above-captioned complaint."[28]

The Issues Presented

1. Whether or not the CA correctly drew the conclusion that Vicente failed to comply with the compromise agreement in the face of the existence of payments made by Vicente.
2. Whether or not there was novation of the Partial Judgment dated July 23, 2001.

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[26] *Id*. at 27-30.

[27] *Id*. at 187.

[28] *Id*. at 188-190.

3. Whether or not the issue on novation of the Partial Judgment dated July 23, 2001 by the February 21, 2003 decision was resolved by the CA.

4. Whether or not the writ of execution was correctly issued against the petitioners.[29]

Simply, the issue for the Court's consideration is whether the CA erred in ruling that the writ of execution, levy on execution and auction sale were valid.

Ruling of the Court

The Court denies the petition.

The Court is not a trier of facts. In *Spouses Bernales v. Heirs of Julian Sambaan*,[30] the Court reiterated that for a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them. There is a question of law when the doubt or difference arises as to what the law is pertaining to a certain state of facts. On the other hand, there is a question of fact when the doubt arises as to the truth or the falsity of alleged facts.[31]

Here, the petitioners essentially argue that since the parties entered into a compromise agreement, which was judicially approved, the same novated the original loan agreement.

The Court disagrees.

Under the Civil Code, novation is one of the means to extinguish an obligation. This is done either by changing the object or principal conditions, by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor.[32] It is a relative extinguishment since a new obligation is created in lieu of the old obligation. The following requisites

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[29] *Id.* at 20.

[30] 624 Phil. 88 (2010).

[31] *Id.* at 97.

[32] CIVIL CODE OF THE PHILIPPINES, Article 1291 provides:

must be met for novation to take place:

(1) There must be a previous valid obligation;

(2) There must be an agreement of the parties concerned to a new contract;

(3) There must be the extinguishment of the old contract; and

(4) There must be the validity of the new contract.[33]

However, novation is never presumed.[34] Article 1292 of the Civil Code provides:

> Art. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

It must be established that the old and new contracts are incompatible on all points, or that the will to novate appear by express agreement of the parties or acts of equivalent import.[35] In the absence of an express provision, a contract may still be considered novated impliedly if it passes the test of incompatibility, that is, whether the contracts can stand together, each one having an independent existence.[36]

In the early case of *Santos v. Reyes, et al.*,[37] the Court held that there was no novation where under the original contract

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Art. 1291. Obligations may be modified by:
(1) Changing their object or principal conditions;
(2) Substituting the person of the debtor;
(3) Subrogating a third person in the rights of the creditor.

[33] *Agro Conglomerates, Inc. v. CA*, 401 Phil. 644, 655-656 (2000).

[34] *Philippine Savings Bank v. Spouses Mañalac, Jr.*, 496 Phil. 671, 687 (2005).

[35] Tolentino, *Civil Code of the Philippines*, Volume IV, p. 383.

[36] *Id*. at 384.

[37] 10 Phil. 123 (1908).

consisting of a principal debtor and a surety, the latter subsequently made an agreement with the creditor to be bound as a principal for the same obligation. There, the Court stated that there can be no effective novation if the contract was not extinguished by an instrument subsequently executed therefor.[38]

As stated in Article 1291, novation may also be brought about by a change in the person of the debtor. Article 1293 of the Civil Code states:

> Art. 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 and 1237.

In *Mercantile Insurance Co., Inc. v. CA*,[39] the Court said:

> The general rule is that novation is never presumed; it must always be clearly and unequivocally shown. Thus, "the mere fact that the creditor receives a guaranty or accepts payments from a third person who has agreed to assume the obligation, **when there is no agreement that the first debtor shall be released from responsibility, does not constitute novation**, and the **creditor can still enforce the obligation against the original debtor**."[40] (Emphasis ours and citations omitted)

In the present case, the compromise agreement entered into by the parties does not contain any provision releasing Ever (the debtor) from its liability to PBCom (the lender). In fact, the first paragraph of the approved compromise agreement states:

> WHEREAS, [**VICENTE] has offered to assume full liability and to undertake the full payment of all the past due accounts of [EVER]** and **to exempt** from any and all **obligations/ liabilities his co-defendants-sureties GEORGE C. GO and NG**

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

[39] 273 Phil. 415 (1991).

[40] *Id*. at 423.

MENG TAM arising from and subject of the above-captioned litigation, without prejudice to the right of [VICENTE] to avail himself of his right for reimbursement under Art. 1236 of the Civil Code of the Philippines[.][41] (Emphasis ours)

There is nothing to be construed from the above-stated paragraph releasing Ever from its obligation. Under the terms of the agreement, Vicente is an additional person who would ensure that the loan of Ever to PBCom would be paid. Under the rules of novation, the mere act of adding another person to be personally liable, who in this case is Vicente, did not constitute novation since there was no agreement to release Ever from its responsibility to PBCom. Thus, absent the release of Ever from the original obligation, PBCom may still enforce the obligation against it.

Since there was no novation, PBCom may proceed to collect from the original debtor, Ever, under the terms of the original loan agreement. The Court holds that there was no irregularity in the issuance of the writ of execution, levy on the properties and the subsequent sale of the auction sale.

WHEREFORE, the petition is **DENIED**. The Decision dated November 28, 2008 and Resolution dated May 6, 2009 of the Court of Appeals in CA-G.R. SP Nos. 84631 and 87444 are hereby **AFFIRMED**.

SO ORDERED.

Peralta (*Acting Chairperson*), *Bersamin,*[*] *Perez,* and *Jardeleza, JJ.,* concur.

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[41] *Rollo*, p. 33.

[*] Additional Member per Raffle dated August 1, 2016 *vice* of Associate Justice Presbitero J. Velasco, Jr.

FIRST DIVISION

[G.R. No. 188769. August 3, 2016]

JOSEPH OMAR O. ANDAYA, *petitioner, vs.* **RURAL BANK OF CABADBARAN, INC., DEMOSTHENES P. ORAIZ and RICARDO D. GONZALEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; MANDAMUS; THE REMEDY TO COMPEL THE REGISTRATION OF THE TRANSFER OF SHARES OF STOCK AND THE CORRESPONDING ISSUANCE OF STOCK CERTIFICATES.— It is already settled jurisprudence that the registration of a transfer of shares of stock is a ministerial duty on the part of the corporation. Aggrieved parties may then resort to the remedy of mandamus to compel corporations that wrongfully or unjustifiably refuse to record the transfer or to issue new certificates of stock. This remedy is available even upon the instance of a *bona fide* transferee who is able to establish a clear legal right to the registration of the transfer. This legal right inherently flows from the transferee's established ownership of the stocks, a right that has been recognized by this Court as early as in *Price v. Martin* x x x. Thus, in *Pacific Basin Securities Co., Inc., v. Oriental Petroleum and Minerals Corp.*, this Court stressed that the registration of a transfer of shares is ministerial on the part of the corporation x x x. Consequently, transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates. x x x Andaya has been able to establish that he is a *bona fide* transferee of the shares of stock of Chute. x x x There is no doubt that Andaya had the standing to initiate an action for mandamus to compel the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book and to issue new stock certificates in his name. As the transferee of the shares, petitioner stands to be benefited or injured by the judgment in the instant petition, a judgment that will either order the bank to recognize the legitimacy of the transfer and petitioner's status as stockholder or to deny the legitimacy thereof.

2. ID.; ID.; ID.; ID.; MAY BE ISSUED WHEN THE REGISTERED OWNER HERSELF HAD REQUESTED THE REGISTRATION OF THE TRANSFER OF SHARES OF STOCK; CASE AT BAR.— Reiterating the ruling in *Rivera v. Florendo* and *Hager v. Bryan*, the Court therein maintained that a mere endorsement of stock certificates by the supposed owners of the stock could not be the basis of an action for mandamus in the absence of express instructions from them. According to the Court, the reason behind this ruling was that the corporation's duty and legal obligation therein were not so clear and indisputable as to justify the issuance of the writ. x x x In the instant case, however, the submitted documents did not merely consist of an endorsement. Rather, petitioner presented several undisputed documents, among which was respondent Oraiz's letter to Chute denying her request to transfer the stock standing in her name in favor of Andaya. This letter clearly indicated that the registered owner herself had requested the registration of the transfer of shares of stock.

3. ID.; ID.; ID.; ID.; REQUISITES.— Section 3, Rule 65 of the Rules of Court, provides for the rules governing a petition for mandamus x x x. [A] writ of mandamus to enforce a ministerial act may issue only when petitioner is able to establish the presence of the following: (1) right clearly founded in law and is not doubtful; (2) a legal duty to perform the act; (3) unlawful neglect in performing the duty enjoined by law; (4) the ministerial nature of the act to be performed; and (5) the absence of other plain, speedy, and adequate remedy in the ordinary course of law.

4. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CLOSE CORPORATIONS; RESTRICTIONS ON THE RIGHT TO TRANSFER SHARES UNDER SECTION 98 OF THE CODE APPLY ONLY TO CLOSE CORPORATIONS.— Respondents primarily challenge the mandamus suit on the grounds that the transfer violated the bank stockholders' right of first refusal and that petitioner was a buyer in bad faith. Both parties refer to Section 98 of the Corporation Code to support their arguments x x x. It must be noted that Section 98 applies only to close corporations. Hence, before the Court can allow the operation of this section in the case at bar, there must first be a factual determination that respondent Rural Bank of Cabadbaran is

indeed a close corporation. There needs to be a presentation of evidence on the relevant restrictions in the articles of incorporation and bylaws of the said bank. From the records or the RTC Decision, there is apparently no such determination or even allegation that would assist this Court in ruling on these two major factual matters. With the foregoing, the validity of the transfer cannot yet be tested using that provision. These are the factual matters that the parties must first thresh out before the RTC.

APPEARANCES OF COUNSEL

Samuel A.M. Jardin for petitioner.
Ricardo D. Gonzalez and *Henry C. Filoteo* for respondents.

R E S O L U T I O N

SERENO, *C.J.*:

This case concerns the dismissal[1] of an action for mandamus that sought to compel respondents Rural Bank of Cabadbaran, Inc., Demosthenes P. Oraiz, and Ricardo D. Gonzalez to register the transfer of shares of stock and issue the corresponding stock certificates in favor of petitioner Joseph Omar O. Andaya. The Cabadbaran City Regional Trial Court (RTC) ruled that petitioner Andaya was not entitled to the remedy of mandamus, since the transfer of the subject shares of stock had not yet been recorded in the corporation's stock and transfer book, and the registered owner, Conception O. Chute, had not given him a special power of attorney to make the transfer. Andaya has filed a Rule 45 petition directly before this Court, insisting that he has a cause of action to institute the suit.

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[1] The assailed Decision dated 17 April 2009 and Order dated 15 July 2009 of the Cabadbaran City Regional Trial Court (Branch 34) in SP Civil Case No. 06-06 were penned by Judge Dax Gonzaga Xenos. RTC Decision, *rollo,* pp. 136-139; RTC Order, *rollo,* pp. 147-148.

FACTS

Andaya bought from Chute 2,200 shares of stock in the Rural Bank of Cabadbaran for ₱220,000.[2] The transaction was evidenced by a notarized document denominated as Sale of Shares of Stocks.[3] Chute duly endorsed and delivered the certificates of stock to Andaya and, subsequently, requested the bank to register the transfer and issue new stock certificates in favor of the latter.[4] Andaya also separately communicated[5] with the bank's corporate secretary, respondent Oraiz, reiterating Chute's request for the issuance of new stock certificates in petitioner's favor.

A few days later, the bank's corporate secretary wrote[6] Chute to inform her that he could not register the transfer. He explained that under a previous stockholders' Resolution, existing stockholders were given priority to buy the shares of others in the event that the latter offered those shares for sale (*i.e.,* a right of first refusal). He then asked Chute if she, instead, wished to have her shares offered to existing stockholders. He told her that if no other stockholder would buy them, she could then proceed to sell her shares to outsiders.

Meanwhile, the bank's legal counsel, respondent Gonzalez, informed[7] Andaya that the latter's request had been referred to the bank's board of directors for evaluation. Gonzalez also furnished him a copy of the bank's previous reply to Chute

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[2] RTC Decision, p. 1, *rollo,* p. 136.

[3] Sale of Shares of Stocks, Annex A of the Petition. *rollo,* pp. 35-36.

[4] RTC Decision, p. 1, *rollo*, p. 136.

[5] Letter-request of Andaya dated 15 October 2004, Annex A of the Petition, *rollo*, p. 49.

[6] Letter of the bank's corporate secretary to Mrs. Chute dated 20 October 2004, Annex A of the Petition, *rollo,* p. 50; RTC Decision, p. 1, *rollo,* p. 136.

[7] Reply of the bank's legal counsel to Andaya dated 22 October 2004, Annex A of the Petition, *rollo*, p. 51.

concerning a similar request from her. Andaya responded[8] by reiterating his earlier request for the registration of the transfer and the issuance of new certificates of stock in his favor. Citing Section 98 of the Corporation Code, he claimed that the purported restriction on the transfer of shares of stock agreed upon during the 2001 stockholders' meeting could not deprive him of his right as a transferee. He pointed out that the restriction did not appear in the bank's articles of incorporation, bylaws, or certificates of stock.

The bank eventually denied the request of Andaya.[9] It reasoned that he had a conflict of interest, as he was then president and chief executive officer of the Green Bank of Caraga, a competitor bank. Respondent bank concluded that the purchase of shares was not in good faith, and that the purchase "could be the beginning of a hostile bid to take-over control of the [Rural Bank of Cabadbaran]."[10] Citing *Gokongwei v. Securities and Exchange Commission,*[11] respondent insisted that it may refuse to accept a competitor as one of its stockholders. It also maintained that Chute should have first offered her shares to the other stockholders, as agreed upon during the 2001 stockholders' meeting.

Consequently, Andaya instituted an action for mandamus and damages[12] against the Rural Bank of Cabadbaran; its corporate secretary, Oraiz; and its legal counsel, Gonzalez. Petitioner sought to compel them to record the transfer in the bank's stock and transfer book and to issue new certificates of stock in his name.

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[8] Letter of Andaya dated 29 October 2004, Annex A of the Petition, *rollo,* pp. 52-53; RTC Decision, p. 2, *rollo*, p. 137.

[9] Letter of the bank dated 3 November 2004, Annex A of the Petition, *rollo,* p. 54; RTC Decision, p. 2, *rollo,* p. 137.

[10] Letter of the bank dated 3 November 2004, Annex A of the Petition, *rollo,* p. 54.

[11] 178 Phil. 266 (1979).

[12] RTC Decision, p. 2, *rollo*, p. 137; Complaint of Andaya, Annex A of the Petition, *rollo,* pp. 27-32.

The RTC issued a Decision dismissing the complaint. Citing *Ponce v. Alsons Cement Corporation*[13] the trial court ruled that Andaya had no standing to compel the bank to register the transfer and issue stock certificates in his name.[14] It explained that he had failed "[to show] that the transfer of subject shares of stock [was] recorded in the stock and transfer book of [the] bank or that [he was] authorized by [Chute] to make the transfer."[15] According to the trial court, *Ponce* requires that a person seeking to transfer shares must appear to have an express instruction and a specific authority from the registered stockholder, such as a special power of attorney, to cause the disposition of stocks registered in the stockholder's name. It ruled that "[w]ithout the sale first registered or an authority from the transferor, it [was] therefore unmistakably clear that [Andaya had] no cause of action for mandamus against [the] bank."

Consequently, Andaya directly filed with this Court a Rule 45 petition for review on *certiorari* assailing the RTC Decision on pure questions of law.

ISSUES

The Court culls the issues raised by petitioner as follows:

1. Whether Andaya, as a transferee of shares of stock, may initiate an action for mandamus compelling the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book, as well as issue new stock certificates in his name
2. Whether a writ of mandamus should issue in favor of petitioner

OUR RULING

The petition is partly meritorious.

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[13] 442 Phil. 98 (2002).

[14] RTC Decision, pp. 3-4, *rollo,* pp. 138-139.

[15] RTC Decision, p. 3, *rollo,* p. 138.

It is already settled jurisprudence[16] that the registration of a transfer of shares of stock is a ministerial duty on the part of the corporation. Aggrieved parties may then resort to the remedy of mandamus to compel corporations that wrongfully or unjustifiably refuse to record the transfer or to issue new certificates of stock. This remedy is available even upon the instance of a *bona fide* transferee[17] who is able to establish a clear legal right to the registration of the transfer.[18] This legal right inherently flows from the transferee's established ownership of the stocks, a right that has been recognized by this Court as early as in *Price v. Martin:*[19]

A person who has purchased stock, and who **desires to be recognized as a stockholder,** for the purpose of voting, **must secure a standing by having the transfer recorded** upon the books. If the transfer is not duly made upon request, **he has, as his remedy, to compel it to be made.**[20] (Emphases supplied)

Thus, in *Pacific Basin Securities Co., Inc., v. Oriental Petroleum and Minerals Corp.,*[21] this Court stressed that the registration of a transfer of shares is ministerial on the part of the corporation:

Clearly, **the right of a transferee/assignee to have stocks transferred to his name is an inherent right flowing from his ownership of the stocks.** The Court had ruled in *Rural Bank of Salinas,*

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[16] *Teng v. Securities and Exchange Commission,* G.R. No. 184332, 17 February 2016; *Pacific Basin Securities Co., Inc. v. Oriental Petroleum,* 558 Phil. 425 (2007); *Rural Bank of Salinas, Inc. v. Court of Appeals,* G.R. No. 96674, 26 June 1992, 210 SCRA 510, 515-516; *Price v. Martin,* 58 Phil. 707 (1933); *Fleischer v. Botica Nolasco Co., Inc.*, 47 Phil. 583 (1925).

[17] *Id*.

[18] *Lim Tay v. Court of Appeals,* 355 Phil. 381 (1998); *Price v. Martin, supra.* See, *e.g.*: *Teng v. Securities and Exchange Commission, supra* note 16.

[19] *Price v. Martin, supra* note 16, at p. 713. See also *Torres v. Court of Appeals*, 344 Phil. 348 (1997).

[20] *Price v. Martin, supra* note 16, at p. 713.

[21] *Supra* note 16.

Inc. v. Court of Appeals that the **corporation's obligation to register is ministerial,** citing *Fletcher,* to wit:

> In transferring stock, the secretary of a corporation acts in purely ministerial capacity, and does not try to decide the question of ownership.
>
> The duty of the corporation to transfer is a ministerial one and if it refuses to make such transaction without good cause, it may be compelled to do so by mandamus.

The Court further held in *Rural Bank of Salinas* that **the only limitation imposed by Section 63 of the Corporation Code is when the corporation holds any unpaid claim against the shares intended to be transferred.**[22] (Emphasis supplied; citations omitted)

Consequently, transferees of shares of stock are real parties in interest having a cause of action for mandamus to compel the registration of the transfer and the corresponding issuance of stock certificates.

We also rule that Andaya has been able to establish that he is a *bona fide* transferee of the shares of stock of Chute. In proving this fact, he presented to the RTC the following documents evidencing the sale: (1) a notarized Sale of Shares of Stocks[23] showing Chute's sale of 2,200 shares of stock to petitioner; (2) a Documentary Stamp Tax Declaration/Return[24] (3) Capital Gains Tax Return;[25] and (4) stock certificates[26] covering the subject shares duly endorsed by Chute. The existence, genuineness, and due execution of these documents have been admitted[27] and remain undisputed. There is no doubt that Andaya had the standing to initiate an action for mandamus

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[22] *Id.* at 684-685.

[23] Annex A of the Petition, *rollo,* pp. 35-36.

[24] *Id.* at 37.

[25] *Id.* at 38.

[26] *Id.* at 39-48.

[27] Pre-trial Order, p. 2, Annex C of the Petition, *rollo,* p. 127.

to compel the Rural Bank of Cabadbaran to record the transfer of shares in its stock and transfer book and to issue new stock certificates in his name. As the transferee of the shares, petitioner stands to be benefited or injured by the judgment in the instant petition, a judgment that will either order the bank to recognize the legitimacy of the transfer and petitioner's status as stockholder or to deny the legitimacy thereof.

This Court further finds that the reliance of the RTC on *Ponce* in finding that petitioner had no cause of action for mandamus against the defendant bank was misplaced. In *Ponce,* the issue resolved by this Court was whether the petitioner therein had a cause of action for mandamus to compel the *issuance* of stock certificates, not the registration of the transfer. Ruling in the negative, the Court said in that case that without any record of the transfer of shares in the stock and transfer book of the corporation, there would be no clear basis to compel that corporation to issue a stock certificate. By the import of Section 63 of the Corporation Code, the stock and transfer book would be the main reference book in ascertaining a person's entitlement to the rights of a stockholder. Consequently, without the registration of the transfer, the alleged transferee could not yet be recognized as a stockholder who is entitled to be given a stock certificate.

In contrast, at the crux of this petition are the registration of the transfer *and* the issuance of the corresponding stock certificates. Requiring petitioner to register the transaction before he could institute a mandamus suit in supposed abidance by the ruling in *Ponce* was a palpable error. It led to an absurd, circuitous situation in which Andaya was prevented from causing the registration of the transfer, ironically because the shares had not been registered. With the logic resorted to by the RTC, transferees of shares of stock would never be able to compel the registration of the transfer and the issuance of new stock certificates in their favor. They would first be required to show the registration of the transfer in their names — the ministerial act that is the subject of the mandamus suit in the first place. The trial court confuses the application of the dicta in *Ponce*,

which is pertinent only to the issuance of new stock certificates, and not to the registration of a transfer of shares. As *Ponce* itself provides, these two are entirely different events. The RTC's anomalous reasoning cannot be given legal imprimatur by this Court.

With regard to the requisite authorization from the transferor, the Court stresses that the concern in *Ponce* was rooted in whether or not the alleged right of the petitioner therein to compel the issuance of new stock certificates was clearly established. Reiterating the ruling in *Rivera v. FIorendo*[28] and *Hager v. Bryan,*[29] the Court therein maintained that a mere endorsement of stock certificates by the supposed owners of the stock could not be the basis of an action for mandamus in the absence of express instructions from them. According to the Court, the reason behind this ruling was that the corporation's duty and legal obligation therein were not so clear and indisputable as to justify the issuance of the writ. The ambiguity of the alleged transferee's deed of undertaking with endorsement led the Court in *Ponce* to rule that mandamus would have issued had the registered owner himself requested the registration of the transfer, or had the person requesting the registration secured a special power of attorney from the registered owner.

In the instant case, however, the submitted documents did not merely consist of an endorsement. Rather, petitioner presented several undisputed documents,[30] among which was respondent Oraiz's letter to Chute denying her request to transfer the stock standing in her name in favor of Andaya. This letter clearly indicated that the registered owner herself had requested the registration of the transfer of shares of stock. There was therefore no sensible reason for the RTC to perfunctorily extract the pronouncement in *Ponce* and then disregard it in the face of admitted facts in addition to the duly endorsed stock certificates.

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[28] 228 Phil. 616 (1986).

[29] 19 Phil. 138 (1911).

[30] Annex A of the Petition, *rollo,* pp. 35-55.

On whether the writ of mandamus should issue, Section 3, Rule 65 of the Rules of Court, provides for the rules governing a petition for mandamus, *viz:*

> SECTION 3. *Petition for mandamus.* — **When any** tribunal, **corporation**, board, **officer or person unlawfully neglects the performance of an act** which the **law specifically enjoins as a duty resulting from an office, trust, or station,** or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is **no other plain, speedy and adequate remedy in the ordinary course of law**, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
>
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (Emphases supplied)

Accordingly, a writ of mandamus to enforce a ministerial act may issue only when petitioner is able to establish the presence of the following: (1) right clearly founded in law and is not doubtful; (2) a legal duty to perform the act; (3) unlawful neglect in performing the duty enjoined by law; (4) the ministerial nature of the act to be performed; and (5) the absence of other plain, speedy, and adequate remedy in the ordinary course of law.[31]

Respondents primarily challenge the mandamus suit on the grounds that the transfer violated the bank stockholders' right of first refusal and that petitioner was a buyer in bad faith. Both parties refer to Section 98 of the Corporation Code to support their arguments, which reads as follows:

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[31] RULES OF COURT, Rule 65, Sec. 3; *Biraogo v. Del Rosario,* G.R. No. 206323, 11 April 2013 (unpublished Resolution); *Pefianco v. Morale,* 379 Phil. 468 (2000); *Lim Tay v. Court of Appeals, supra* note 18; *Garces v. Court of Appeals,* 328 Phil. 403 (1996); *Kapisanan ng mga Manggagawa sa Manila Railroad Company Credit Union, Inc. v. Manila Railroad Company,* 177 Phil. 569 (1979).

SECTION 98. *Validity of restrictions on transfer of shares.* — **Restrictions on the right to transfer shares must appear in the articles of incorporation and in the by-laws as well as in the certificate of stock; otherwise, the same shall not be binding on any purchaser thereof in good faith.** Said restrictions shall not be more than onerous than granting the existing stockholders or the corporation the option to purchase the shares of the transferring stockholder with such reasonable terms, conditions or period stated therein. If upon the expiration of said period, the existing stockholders or the corporation fails to exercise the option to purchase, the transferring stockholder may sell his shares to any third person. (Emphases supplied)

It must be noted that Section 98 applies only to close corporations. Hence, before the Court can allow the operation of this section in the case at bar, there must first be a factual determination that respondent Rural Bank of Cabadbaran is indeed a close corporation. There needs to be a presentation of evidence on the relevant restrictions in the articles of incorporation and bylaws of the said bank. From the records or the RTC Decision, there is apparently no such determination or even allegation that would assist this Court in ruling on these two major factual matters. With the foregoing, the validity of the transfer cannot yet be tested using that provision. These are the factual matters that the parties must first thresh out before the RTC.

After finding that petitioner has legal standing to initiate an action for mandamus, the Court now reinstates the action he filed and remands the case to the RTC to resolve the propriety of issuing a writ of mandamus. The resolution of the case must include the determination of all relevant factual matters in connection with the issues at bar. The RTC must also resolve petitioner's prayer for the payment of attorney's fees, litigation expenses, moral damages, and exemplary damages.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The Decision dated 17 April 2009 and the Order dated 15 July 2009 of the Regional Trial Court, Branch 34, Cabadbaran City, which dismissed petitioner's action for

mandamus, are **SET ASIDE**. The action is hereby **REINSTATED** and the case **REMANDED** to the court of origin for further proceedings. The trial court is further enjoined to proceed with the resolution of this case with dispatch.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 192297. August 3, 2016]

SUPRA MULTI-SERVICES, INC., JESUS TAMBUNTING, JR., and RITA CLAIRE T. DABU, *petitioners, vs.* **LANIE M. LABITIGAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT; JUST CAUSES; WILLFUL BREACH OF TRUST; THE EMPLOYEE'S ACT OF TAKING ADVANTAGE OF HER POSITION TO GRANT HERSELF A MONETARY BENEFIT EVEN IF NOT ENTITLED THERETO AND AFTER ALREADY BEING ORDERED TO STOP DOING SO CONSTITUTES BREACH OF TRUST; CASE AT BAR.— Under Article 282 (c) of the Labor Code, as amended, an employer may terminate an employment for, among other just causes, fraud or willful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative. x x x Respondent, as Accounting Supervisor, was occupying a managerial position.

x x x As Accounting Supervisor, respondent was entrusted with the custody and management of one of the most delicate matters of any business, that is, the financial resources of petitioner SMSI. Respondent also exercised discretion in the preparation of the payroll of the employees of petitioner SMSI, evident from the fact that it was by her own judgment call that she granted and paid herself pro-rated ECOLA since November 2002. x x x It was not disputed that respondent was earning more than minimum wage, so she was not one of the intended beneficiaries of ECOLA under Wage Order Nos. NCR-09 and NCR-10. Respondent though insisted that Wage Order Nos. NCR-09 and NCR-10 granted her the right to a pro-rated share of the ECOLA on the ground of wage distortion. x x x [O]ther than respondent's bare allegation of wage distortion, there is an absolute dearth of proof to corroborate the same. x x x It bears to stress further that the formula for computing pro-rated ECOLA in case of wage distortions was not reproduced in Wage Order No. NCR-10. Consequently, from the effectivity date of Wage Order No. NCR-10 on July 10, 2004, respondent's unilateral grant of pro-rated ECOLA to herself became even more evidently baseless. Even assuming that respondent acted in good faith in granting herself ECOLA since November 2002, petitioners already explicitly ordered the cancellation of respondent's ECOLA through the Notice of Personnel Action dated August 22, 2005. Yet, in defiance of said Notice, respondent still continued to grant and pay herself ECOLA until December 15, 2005. x x x Respondent herself referred to the amount of daily ECOLA she was receiving as "miniscule," but given that she had been receiving the unwarranted ECOLA since November 2002, it had already accumulated to a substantial amount. And regardless of the amount involved, it is apparent that respondent took advantage of her position as Accounting Supervisor in granting herself ECOLA even when she was not entitled to the same and after already being ordered to stop doing so, which constituted breach of trust. Willful breach of trust is one of the just causes under Article 282(c) of the Labor Code, as amended, for the employer to terminate the services of an employee.

2. ID.; ID.; ID.; ID.; ID.; A FINDING OF BREACH OF TRUST ON THE PART OF THE EMPLOYEE ALREADY JUSTIFIES HER DISMISSAL FROM THE SERVICE.—

The law is plain and clear: willful breach of trust is a just cause for termination of employment. Necessarily, a finding of breach of trust on the part of respondent in the present case already justified her dismissal from service by petitioners. An employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. A company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel occupying positions of responsibility. Together with petitioners' compliance with procedural due process, there is no other logical conclusion than that respondent's dismissal was valid. x x x [R]espondent's length of service of 11 years at petitioner SMSI did not mitigate, but even aggravated her offense, demonstrating, in addition to her insubordination and dishonesty, her lack of loyalty. It is likewise worthy to note that respondent, through her years of employment, was charged with the commission of several other transgressions x x x. These administrative charges of previous acts of dishonesty or negligence form part of respondent's employment record and which the petitioners could also very well consider in finally deciding to impose upon respondent the ultimate penalty of dismissal for her latest infraction.

3. **ID.; ID.; ID.; BACKWAGES AND SEPARATION PAY; THE ENTITLEMENT THERETO IS INCONSISTENT WITH A FINDING THAT THERE WAS NO ILLEGAL DISMISSAL.—** In view of the valid dismissal from service of respondent, then she is not entitled to backwages, as well as separation pay in lieu of reinstatement. The award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code, as amended, and as held in a catena of cases, the employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof.

4. **ID.; ID.; NATIONAL LABOR RELATIONS COMMISSION AND LABOR ARBITERS; HAVE JURISDICTION OVER THE CLAIM OF THE EMPLOYER FOR ACTUAL DAMAGES AGAINST ITS DISMISSED EMPLOYEE, WHERE THE BASIS FOR THE CLAIM ARISES FROM OR IS NECESSARILY CONNECTED WITH THE FACT OF TERMINATION, AND ENTERED AS A**

COUNTERCLAIM IN THE ILLEGAL DISMISSAL CASE.— Unlike the unwarranted ECOLA, however, the Court cannot order respondent to pay her outstanding cash advances from petitioner SMSI, allegedly amounting to ₱64,173.83. In *Bañez v. Valdevilla*, the Court recognized that the jurisdiction of Labor Arbiters and the NLRC in Article 217 of the Labor Code, as amended, is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations." Whereas the Court in a number of occasions had applied the jurisdictional provisions of Article 217 to claims for damages filed by employees, it also held that by the designating clause "arising from the employer-employee relations," Article 217 should apply with equal force to the claim of an employer for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counterclaim in the illegal dismissal case. Petitioners' counterclaim for payment of respondent's outstanding cash advances, although undoubtedly arising from employer-employee relations between petitioners and respondent, did not arise from or was not necessarily connected with the fact of respondent's termination. x x x [P]etitioners terminated respondent's employment on the ground that respondent, in granting herself unwarranted ECOLA, willfully breached the trust reposed in her by petitioners as Accounting Supervisor. Respondent's failure to make the necessary deductions from her salary to pay for her cash advances from petitioner SMSI was clearly another transgression petitioners were charging respondent with. While the Court may take cognizance herein of the fact that such a charge by petitioners against respondent exists, it has no jurisdiction to determine the truth or falsity of such charge. Such charge was not covered by the notices and hearing petitioners accorded respondent prior to the latter's dismissal and for the Court to rule upon the same in this case would be in violation of respondent's right to due process.

APPEARANCES OF COUNSEL

Andy S. De Vera for petitioners.
Rivera Santos & Maranan for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, filed by petitioners Supra Multi-Services, Inc. (SMSI), Jesus S. Tambunting, Jr. (Tambunting), and Rita Claire T. Dabu (Dabu), seeking, among other reliefs, the modification of the Decision[1] dated February 22, 2010 of the Court of Appeals in CA-G.R. SP No. 103847 insofar as it awarded separation pay to respondent Lanie M. Labitigan based on its finding that although respondent committed a breach of petitioners' trust, the termination of respondent's employment was too harsh a punishment.

I
FACTUAL ANTECEDENTS

Petitioner SMSI is a domestic corporation engaged in furnishing its clients with manpower, such as janitors, drivers, messengers, and maintenance personnel. Petitioners Tambunting and Dabu are the President and Vice-President for Administration, respectively, of petitioner SMSI.

Respondent was hired as a rank and file employee of petitioner SMSI on March 13, 1994. When respondent's employment was terminated on December 21, 2005, she was holding the position of Accounting Supervisor with a monthly salary of ₱13,000.00.

On June 15, 2006, respondent filed before the Labor Arbiter a complaint for illegal dismissal against petitioners, seeking reinstatement and payment of backwages, overtime pay, holiday pay, premium pay for holiday and rest day, separation pay, unused leave pay, damages, and attorney's fees. Her complaint was docketed as NLRC-NCR Case No. 00-06-05066-06.

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[1] *Rollo*, pp. 55-68; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Marlene Gonzales-Sison and Michael P. Elbinias concurring.

Respondent's Allegations

In support of her complaint, respondent alleged that she was a simple rank and file employee who was elevated to the position of a supervisor but still performed only clerical work and did not exercise any discretion on how to run the financial affairs of the company. Respondent admitted to being responsible for preparing the payroll of the employees of petitioner SMSI.

During the course of respondent's employment, Wage Order No. NCR-09 took effect on November 5, 2001 providing an Emergency Cost of Living Allowance (ECOLA) in the amount of ₱30.00 per day to private sector workers and employees in the National Capital Region (NCR) earning minimum wage. Based on Wage Order No. NCR-09, respondent granted herself ECOLA in the pro-rated amount of ₱14.67 per day beginning November 2002. When Wage Order No. NCR-10 took effect on July 10, 2004, granting additional ECOLA of ₱20.00 per day, respondent accordingly increased her ECOLA to ₱24.67 per day. In granting herself pro-rated ECOLA, respondent reasoned that Wage Order Nos. NCR-09 and NCR-10 granted ECOLA not only to minimum wage earners, but also to other workers and employees who would suffer from wage distortion because of the application of the ECOLA, such as herself. Said Wage Orders prescribed a formula precisely to resolve wage distortion, which respondent applied to her salary and to the salaries of others similarly situated.

Respondent averred that her grant to herself of pro-rated ECOLA under Wage Order Nos. NCR-09 and NCR-10 was with the knowledge and conformity of petitioners. Petitioner Tambunting himself approved and signed the payroll, and any unauthorized padding or undeserved compensation in the payroll could not have escaped him.

However, on August 22, 2005, a Notice of Personnel Action[2] was issued to respondent noting an "[e]rror in granting proportionate ECOLA W.O. NCR 9" and cancelling respondent's

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[2] *Id*. at 84.

daily allowance of ₱24.67. Respondent claimed that she immediately took exception to the Notice and sought audience with petitioner Tambunting, who promised to look into the matter. For the next four months or until December 12, 2005, "[n]o one protested against the status quo, including the fact that [respondent] continued to receive the miniscule sum of ₱24.67 per day as ECOLA[.]"[3]

Respondent reproached petitioners for being cruel and malicious in suddenly issuing Memo 11-673[4] dated December 12, 2005, which gave respondent the following directive:

> This refers to the **NOTICE OF PERSONNEL ACTION** dated August 22, 2005 approved and noted by the President.
>
> Please explain and answer in writing within 24 hours upon receipt of this memo why there shall be no administrative action taken against you for the following:
>
> 1. **INSUBORDINATION.** You continued to give yourself the proportionate ECOLA despite its cancellation per **Notice of Personnel Action** noted and approved by the President on August 22, 2005. In so doing, you manifested gross disrespect to the decision of the President and the whole HR Department.
>
> 2. **DISHONESTY.** Despite of being aware of the fact that only the minimum wage earners and those whose basic salary are distorted as a result of addition of ECOLA, you continually give yourself the questioned proportionate ECOLA. You are the [company's] existing payroll master and you are very much aware of that rule. In fact, you are applying such rule to all other operation personnel making your case an exception to the rule.
>
> This is for your information and compliance.

Respondent pointed out that petitioners' malice became even more evident when on the very next day, December 13, 2005, she was no longer allowed to enter the premises of petitioner

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[3] CA *rollo*, p. 45.

[4] *Rollo*, p. 93.

SMSI. Petitioners hurriedly issued Memo 12-675[5] also on December 13, 2005, which instructed respondent thus:

> This refers to your refusal to receive the **Memo 11-673** dated December 12, 2005.
>
> Because of the gravity of the offense, you are then being placed on preventive suspension effective December 14, 2005 while under investigation for *Insubordination* and *Dishonesty*.
>
> However, you are required to come to office when you are needed by reasons of such investigation.
>
> This is for your information and compliance.

Petitioners followed up with Memo 12-687[6] dated December 14, 2005 to respondent which dictated that:

> This refers to your **Memo 12-675** dated December 13, 2005.
>
> 1. Your preventive suspension is within 30 days.
> 2. You are required to report to office on December 19, 2005 (Monday) at 3 pm for a preliminary Administrative Hearing.
> 3. You are instructed to bring anybody with you on your side. It could be your husband and/or your son. Should you prefer to bring a legal counsel please inform us a day before the abovementioned schedule.
>
> This is for your information and compliance.
>
> We trust that you will give the matter your most favorable cooperation and attention.

Respondent attended the administrative hearing on December 19, 2005, accompanied by her son. During the hearing, petitioner Dabu repeatedly berated and insulted respondent.

On December 20, 2005, petitioners issued Memo 12-692,[7] a Notice of Termination, which informed respondent that:

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[5] *Id*. at 95.

[6] *Id*. at 96.

[7] *Id*. at 112.

After due consideration of all the circumstances, grounds have been established to justify your termination.

1. You willfully disobey the lawful orders of your employer.
2. Willfull breach of the trust reposed in you by the management.

In view of the above and by your admission of your disobedience and dishonesty during the administrative hearing, you had violated the Company Implementing Rules and Regulations on **Article V – Section 25** which states that: *Act of dishonesty to the company shall be penalized with termination for the first offense.*

Your services with the corporation are then being terminated effective at the close of the business hours on December 21, 2005.

This is for your information.

Respondent received a copy of Memo 12-692 dated December 20, 2005 on December 21, 2005. That same day, respondent went to the office of petitioner SMSI to retrieve her personal belongings, which included an amount of less than ₱100.00 tucked in her drawer, but she was refused entry. It was only the next day, on December 22, 2005, that respondent was allowed to take her personal belongings.

It was apparent to respondent that petitioners Tambunting and Dabu had resolved to dismiss her because she was supposedly "highly paid" and petitioner SMSI would not have to give separation pay for her considerable tenure of 12 years. Respondent's unceremonious dismissal was already a foregone conclusion, so respondent was never really accorded a chance to defend herself.

Respondent lastly professed that she could not afford to return three years of ECOLA. Being the breadwinner for a family with five children, which included a special child with Down Syndrome, respondent was living hand-to-mouth.

Petitioners' Allegations

Petitioners conceded that respondent was initially hired as a rank and file employee, who eventually became the Accounting Supervisor of petitioner SMSI. Given the absence of an

Accounting Manager, respondent agreed, in a memorandum[8] dated February 12, 2001 addressed to petitioner Tambunting, to accept the responsibilities of said position provided that petitioner SMSI would hire an accounting assistant to assume some of respondent's current responsibilities; respondent would receive a monthly allowance of ₱1,000.00 beginning February 2001; and respondent would undergo training for three months under a Ms. Vilma Roda. For taking over the responsibilities of Accounting Manager, respondent's monthly salary was increased from ₱8,193.42 to ₱12,000.00 beginning June 2001.[9] By 2005, respondent was receiving a monthly salary of ₱13,000.00 as Accounting Supervisor.

According to petitioners, respondent's position as Accounting Supervisor was reposed with trust and confidence, and among her duties and responsibilities were as follows:

1. Manages accounting functions and preparation of reports and statistics detailing financial results;
2. Checks, verifies, and approves payroll entries;
3. In charge of preparation of admin payroll;
4. Checks and verifies daily check disbursements;
5. Contacts delinquent account holders by telephone or in writing and requests payments to bring the account current;
6. Assists the messenger/collector in personally collecting client's check payments[;]
7. Oversees financial and accounting system controls and standards and ensures timely financial and statistical reports for management and/or Board of Directors' use;
8. Performs routine banking transaction;
9. Handles cash and cash accounts; and,

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[8] *Id*. at 80.

[9] *Id*. at 81.

10. Performs all accounting and finance functions and other related tasks as required.[10]

Petitioners contended that they discovered only in August 2005 that respondent was receiving ECOLA, even when she was not entitled to the same under Wage Order Nos. NCR-09 and NCR-10. Respondent willfully and deliberately ignored and disobeyed the Notice of Personnel Action dated August 22, 2005 cancelling the payment of her daily ECOLA of ₱24.67 beginning the payroll for August 16, 2005. Respondent continued to grant/give herself ECOLA in the payroll from August 16, 2005 to December 15, 2005.

Consequently, petitioner SMSI, through its HR Department, issued Memo 11-673 dated December 12, 2005 requiring respondent to explain in writing within 24 hours why no administrative action should be taken against her for insubordination and dishonesty. Respondent, though, refused to receive her copy of said Memo when served on December 13, 2005, as witnessed by Melanie M. Bollosa (Bollosa), Accounting Assistant of petitioner SMSI.[11] Petitioner SMSI next issued Memo 12-675 dated December 13, 2005 (placing respondent under preventive suspension starting December 14, 2005) and Memo 12-687 dated December 14, 2005 (fixing respondent's preventive suspension at 30 days and advising respondent to attend the administrative hearing on December 19, 2005), copies of which were received by respondent on December 14, 2005 and December 15, 2005, respectively.

During the administrative hearing on December 19, 2005, attended by respondent with her son, respondent was unable to justify her grant/payment of ECOLA to herself and refusal to obey the order of petitioner SMSI to stop the same. It was likewise discovered that (1) respondent availed herself of cash advances from petitioner SMSI, which she was supposed to pay by periodically deducting certain amounts from her salary,

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[10] *Id.* at 18-19.

[11] *Id.* at 93-94.

but since she was not making such deductions, the accumulated cash advances already amounted to ₱64,173.83; and (2) her employment record with petitioner SMSI, spanning several years, was riddled with previous acts of insubordination and dishonesty.

As a result, petitioner SMSI issued Memo 12-692 dated December 20, 2005 terminating respondent's services effective at the close of business hours on December 21, 2005.

Labor Arbiter's Ruling

After an exchange of pleadings, the Labor Arbiter rendered her Decision[12] on February 19, 2007, in respondent's favor. The Labor Arbiter found:

> At bar, the issue boils down to whether or not the act of [respondent] in continuously receiving her ECOLA after she was informed that she is not entitled to receive ECOLA sometime in August 2005 constitutes dishonesty so as to warrant her termination.
>
> x x x x x x x x x
>
> While it is true that ECOLA is being enjoyed by minimum wage earners, the provisions of the Wage Orders are not absolute since the Orders expressly provide certain exceptions as when it would result in wage distortion.
>
> It appears from the records that [respondent] merely applied the procedure prescribed by Article 124 of the Labor Code and for which she received not the entire amount but the pro-rated share of the mandated amount. This of course does not constitute payroll padding as alleged by [petitioners].
>
> [Respondent] had aptly brought this matter up with management but this issue of Wage distortion was never settled by the [petitioners]. If indeed it were true that [respondent] was an Account Supervisor or an Accounting Manager for that matter, there must be wage level that distinguishes her position as such from a mere rank and file minimum wage earner. This is to avoid a situation where a supervisor would be receiving the same wage level as that of the supervisees.

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[12] *Id*. at 115-124; penned by Labor Arbiter Daisy G. Cauton-Barcelona.

The [petitioners] have not discussed this matter of wage distortion in their pleadings but had focused their arguments mainly on the alleged non-entitlement of [respondent] to ECOLA and her refusal to receive the notice requiring her to explain.

[Petitioners] had also resuscitated infractions whose penalty had been aptly served. We find this as totally irrelevant at bar. While we note certain demeanor of [respondent] as inappropriate like her refusal to acknowledge receipt of the memorandum being served upon her, this nevertheless, is not sufficient to warrant her termination. Such demeanor is understandable as she was already placed under preventive suspension. The penalty of dismissal is too harsh given the attendant circumstances that this issue of ECOLA is an open matter.

Records also show that her alleged illegally collected ECOLA has been settled upon her termination and upon the release of her final salary on December 19, 2005. It being the case, we find that paying her separation pay in lieu of reinstatement would be the most practicable relief under the circumstances. (Citation omitted.)

In the end, the Labor Arbiter decreed:

WHEREFORE, prescinding from the foregoing considerations, the [petitioners] are hereby ordered to pay the [respondent] her separation pay at the rate of one (1) month salary for every year of service computed from date of hire up to date hereof or the total amount of *ONE HUNDRED SIXTY-NINE THOUSAND (**₱169,000.00**) Pesos*.[13]

Ruling of the NLRC

Petitioners filed an appeal before the National Labor Relations Commission (NLRC), which was docketed as NLRC LAC No. 08-002292-07.

In a Resolution[14] dated September 24, 2007, the NLRC initially dismissed petitioners' appeal for failing to submit a certificate

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[13] *Id.* at 123-124.

[14] *Id*. at 125-127; penned by Presiding Commissioner Lourdes C. Javier with Commissioners Tito F. Genilo and Gregorio O. Bilog III concurring.

of non-forum shopping as required by Rule VI, Section 4 of the NLRC New Rules of Procedure.

Petitioners moved for reconsideration of the dismissal of their appeal, attributing their failure to submit the certificate of non-forum shopping to the inadvertence of their staff and finally submitting the required certificate.

The NLRC, in its Decision[15] dated January 31, 2008, reconsidered its Resolution dated September 24, 2007 and gave due course to petitioners' appeal.

In the same Decision, the NLRC overturned the Labor Arbiter and adjudged that petitioners had sufficient cause to dismiss respondent. Pertinent portions of the NLRC Decision are reproduced below:

> We find reversible error.
>
> [Respondent's] justification for entitlement to proportionate share of ECOLA under Wage Order Nos. 9 and 10 is to prevent wage distortion.
>
> We are not convinced.
>
> Records show that there are other employees of [petitioners] who, like [respondent], received more than the minimum wage. Yet, these other employees did not receive proportionate share of ECOLA. [Respondent's] attention on this matter was called by [petitioners] in a memorandum dated December 12, 2005 x x x.
>
> x x x x x x x x x
>
> The fact, that other personnel of [petitioners] receiving more than the minimum wage were not paid ECOLA, was admitted by [respondent] during the administrative hearing conducted by [petitioners] on December 19, 2005 x x x. Pertinent portion of the findings in said hearing reads:
>
> "*4. That in one of the inquiry of the Accounting Manager one time asking why some of the employees have no E-COLA, that the respondent (complainant) answered quickly*

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[15] *Id.* at 71-77.

> *with "Kasi ma'am, hindi po sila minimum, above minimum napo", which was questioned by the committee member. If only the minimum wage earners were entitled to the E-COLA, why did the respondent (complainant) gave herself a corresponding E-COLA? That the respondent (complainant) answered with "because it was given to me as a result of distortion". That should be applied to all employees at her level in terms of rates since she is a payroll master.*"

As correctly argued by [petitioners], if indeed there was wage distortion then [respondent], being in charge of the payroll, should have applied proportionately the ECOLA to affected employees. But she did not. Other employees of [petitioners] who were paid more than the minimum wage and/or with the same salary rate with [respondent] were not given ECOLA x x x. As it appears it was only [respondent] who received proportionate ECOLA from among the employees of [petitioners] who are receiving more than the minimum wage. Clearly, there was a breach of trust committed by [respondent] that would warrant her termination from the service. It is to be stressed that [respondent's] position as Accounting Supervisor involves trust and confidence for it deals with [petitioners'] finances. One aspect of which is the preparation of [petitioners'] payroll for their employees.

All told, we find that [petitioners] had sufficient cause to dismiss [respondent] on ground of loss of trust and confidence.[16]

The NLRC ruled thus:

WHEREFORE, premises considered, the Decision dated February 19, 2007 is hereby SET ASIDE and a new one entered DISMISSING the complaint for lack of merit.[17]

In a Resolution[18] dated March 27, 2008, the NLRC denied respondent's Verified Motion for Reconsideration.

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[16] *Id*. at 75-76.

[17] *Id*. at 77.

[18] *Id*. at 78-79.

Ruling of the Court of Appeals

Respondent then sought recourse from the Court of Appeals through a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 103847. Respondent attributes grave abuse of discretion on the part of the NLRC for (1) giving due course to petitioners' appeal notwithstanding its jurisdictional defects; and (2) reversing the Labor Arbiter's finding that respondent was illegally dismissed.

The Court of Appeals promulgated its Decision on February 22, 2010.

On the alleged jurisdictional defects of petitioners' Memorandum of Appeal before the NLRC, the Court of Appeals held that the last day of the 10-day period for petitioners to file their appeal before the NLRC fell on May 6, 2007, Sunday, so the Memorandum of Appeal petitioners filed the next working day, May 7, 2007, Monday, was still timely filed; that the posting by petitioners of a supersedeas bond with their appeal on May 7, 2007 was plain from the records; and that the NLRC was correct in reconsidering its previous dismissal of the appeal given the subsequent submission by petitioners of their certificate of non-forum shopping, and the policies that labor cases must be decided according to justice and equity and the substantial merits of the controversy and that technical rules of procedure may be relaxed in labor cases to serve the demands of substantial justice.

As to whether or not respondent was illegally dismissed, the Court of Appeals concluded that petitioners complied with the requirements for procedural due process in dismissing respondent:

> The minimum requirement of due process in termination proceedings consists of notice to the employees intended to be dismissed and the grant to them of an opportunity to present their own side on the alleged offense or misconduct, which led to the management's decision to terminate. To meet the requirements of due process, the employer must furnish the worker sought to be dismissed with two written notices before termination of employment

can be legally effected, *i.e*., (i) a notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (ii) a subsequent notice after due hearing which informs the employee of the employer's decision to dismiss him. These requirements were substantially complied with in the present case.

The memorandum dated December 12, 2005 of [petitioners'] HR manager sufficiently apprised [respondent] of the particular acts or omissions for which she was charged of "insubordination" and "dishonesty." In the same memorandum, she was directed to submit her explanation within twenty-four (24) hours from notice thereof. However, [respondent] refused to receive the memorandum. Thus, in a memorandum dated December 13, 2005, [respondent] was placed under preventive suspension effective December 14, 2005 while under investigation for insubordination and dishonesty. An administrative hearing was conducted on December 19, 2005. In a memorandum dated December 20, 2005, [respondent] was informed of [petitioners'] decision to dismiss her. x x x.[19] (Citations omitted.)

As for substantive due process, while the Court of Appeals agreed with the NLRC that the requisites for a valid dismissal of respondent on the ground of loss of trust and confidence were present in this case, it determined that the penalty of dismissal was too harsh under the circumstances. According to the appellate court:

Article 282(c) of the Labor Code, as amended, allows an employer to terminate the services of an employee for loss of trust and confidence. There are two (2) requisites for a valid dismissal on the ground of loss of trust and confidence. The first requisite for dismissal on the ground of loss of trust and confidence is that the employee concerned must be one holding a position of trust and confidence. Settled is the rule that in order to determine whether an employee holds a position of trust and confidence, what should be considered is not the job title but the actual work that the employee performs. The second requisite is that there must be an act that would justify the loss of trust and confidence.

The aforementioned requisites are present in this case. [Respondent] occupied the position of accounting supervisor at the time of her

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[19] *Id*. at 63-64.

dismissal from employment. The duties of [respondent] as an accounting supervisor included, among others, checking and verifying of payroll entries encoded by the payroll clerk, preparation of administrative payroll, overseeing financial and accounting system controls and standards and performance of all accounting and finance functions as required by the company. As correctly pointed out by public respondent NLRC, [respondent's] "position as Accounting Supervisor involves trust and confidence for it deals with [petitioners'] finances." Public respondent NLRC considered [respondent] to have breached [petitioners'] trust because it appears it was only complainant ([respondent]) who received proportionate ECOLA from among the employees of [petitioners] who are receiving more than the minimum wage. x x x.

x x x x x x x x x

There was, therefore, reasonable basis to sanction [respondent] for allowing herself to receive a proportionate ECOLA, while other similarly-situated employees did not. However, the penalty of dismissal is too harsh under the circumstances. It is undisputed that (i) [respondent] had worked for [petitioners] for more than eleven (11) years and (ii) her erroneously collected ECOLA had been deducted from her final salary when she was dismissed from employment on December 21, 2005. Hornbook is the doctrine that infractions committed by an employee should merit only the corresponding penalty demanded by the circumstances. The penalty must be commensurate with the act, conduct or omission imputed to the employee.[20] (Citations omitted.)

The Court of Appeals then proceeded to award respondent with separation pay in lieu of reinstatement, but denied her backwages and damages. Citing *Victory Liner, Inc. v. Race*,[21] the appellate court rationalized:

Anent [respondent's] claim that she is entitled to backwages, separation pay and damages, worth mentioning are the basic provisions of Article 279 of the Labor Code, as amended, that an illegally dismissed employee shall be entitled to reinstatement, backwages inclusive of allowances, and to his other benefits or their monetary

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[20] *Id.* at 61-63.

[21] 593 Phil. 606 (2008).

equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. Based on this provision, an illegally dismissed employee shall be entitled to reinstatement and full backwages. In the event that reinstatement is no longer possible, then payment of separation pay may be ordered in its stead.

Significantly, however, the Supreme Court has qualified and/or limited the application of Article 279 of the Labor Code on the award of backwages. In *Victory Liner, Inc. vs. Pablo Race*, the Supreme Court pointed out several cases wherein the award of backwages was limited to a certain number of years, or no award was given at all. Thus:

> In *San Miguel Corporation v. Javate, Jr.*, we affirmed the consistent findings and conclusions of the Labor Arbiter, National Labor Relations Commission (NLRC), and Court of Appeals that the employee was illegally dismissed since he was still fit to resume his work; but the employer's liability was mitigated by its evident good faith in terminating the employee's services based on the terms of its Health, Welfare and Retirement Plan. Hence, the employee was ordered reinstated to his former position without loss of seniority and other privileges appertaining to him prior to his dismissal, but the award of backwages was limited to only one year considering the mitigating circumstance of good faith attributed to the employer.
>
> In another case, *Dolores v. National Labor Relations Commission*, the employee was terminated for her continuous absence without permission. Although we found that the employee was indeed guilty of breach of trust and violation of company rules, we still declared the employee's dismissal illegal as it was too severe a penalty considering that she had served the employer company for 21 years, it was her first offense, and her leave to study the French language would ultimately benefit the employer who no longer had to spend for translation services. Even so, other than ordering the employee's reinstatement, we awarded the said employee backwages limited to a period of two years, given that the employer acted without malice or bad faith in terminating the employee's services.
>
> While in the aforementioned cases of illegal dismissal, we ordered the employee's reinstatement, but awarded only limited

backwages in recognition of the employer's good faith, there were also instances when we only required the employer to reinstate the dismissed employee without any award for backwages at all.

The employee in *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, was found guilty of breach of trust for stealing high-grade stones from his employer. However, taking into account the employee's 23 years of previously unblemished service to his employer and absent any showing that his continued employment would result in the employer's oppression or self-destruction, we considered the employee's dismissal a drastic punishment. We deemed that the ends of social and compassionate justice would be served by ordering the employee reinstated but without backwages in view of the employer's obvious good faith.

Similarly, in *San Miguel Corporation v. Secretary of Labor*, the employee was dismissed after he was caught buying from his co-workers medicines that were given gratis to them by the employer company, and re-selling said medicines, in subversion of the employer's efforts to give medical benefits to its workers. We likewise found in this case that the employee's dismissal was too drastic a punishment in light of his voluntary confession that he committed trafficking of company-supplied medicines out of necessity, as well as his promise not to repeat the same mistake. We ordered the employee's reinstatement but without backwages, again, in consideration of the employer's good faith in dismissing him.

Reference may also be made to the case of *Manila Electric Company v. National Labor Relations Commission*, wherein the employee was found responsible for the irregularities in the installation of electrical connections to a residence, for which reason, his services were terminated by the employer's company. We, however, affirmed the findings of the NLRC and the Labor Arbiter that the employee should not have been dismissed considering his 20 years of service to the employer without any previous derogatory record and his being awarded in the past two commendations for honesty. We thus ruled that the employee's reinstatement is proper, without backwages, bearing in mind the employer's good faith in terminating his services.

In sum, while the Court holds that [respondent] committed breach of trust for continuously granting proportionate ECOLA to herself despite [petitioners'] previous order for its discontinuance, the same did not merit the ultimate penalty of dismissal considering that she had worked for the company for more than eleven (11) years and [petitioners] had deducted the amount from her last salary. Hence, the labor arbiter's award of separation pay (since strained relations do not warrant reinstatement) to [respondent] is correct. Notably, even the labor arbiter did not award backwages to [respondent]. The Court sees no cogent reason to rule differently, inasmuch as [respondent's] dismissal was apparently done in good faith by [petitioners] after they had lost their trust in [respondent] and the latter was afforded ample opportunity to explain her side.

Respondent's] further prayer for damages has no basis under the circumstances. An employer may only be held liable for damages if the attendant facts show that it was oppressive to labor or done in a manner contrary to morals, good customs and public policy.[22] (Citations omitted.)

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

WHEREFORE, the petition is partly granted. The Decision dated January 31, 2008 and Resolution dated March 27, 2008 of the public respondent NLRC are modified and [petitioners] are ordered to pay separation pay to [respondent], as previously determined by the labor arbiter, without the award of backwages.[23]

Petitioners' Motion for Partial Reconsideration was denied by the Court of Appeals in its Resolution[24] dated May 13, 2010.

II

RULING OF THE COURT

Hence, the Petition at bar in which petitioners assign a couple of errors on the part of the Court of Appeals, *viz.*:

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[22] *Rollo*, pp. 64-67.

[23] *Id.* at 67.

[24] *Id.* at 70.

I.

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT'S COMMISSION OF BREACH OF TRUST DID NOT MERIT THE ULTIMATE PENALTY OF DISMISSAL.

II.

THE HONORABLE COURT OF APPEALS ERRED IN AWARDING SEPARATION PAY TO RESPONDENT.[25]

Petitioners seek the following reliefs from the Court:

PRESCINDING THEREFROM, it most respectfully prayed of this Honorable Court that judgment be rendered, as follows:

1. to **MODIFY** the Honorable Court of Appeals' Decision dated February 22, 2010 and Resolution dated May 13, 2010 only in so far as granting [respondent] separation pay.

2. to **AFFIRM** *en toto* the National Labor Relations Commission Decision dated January 31, 2008 and the Resolution dated May 27, 2008 of DISMISSING the complaint for utter lack of merit.

3. to Order respondent to pay [petitioners] the total amount of the ECOLA from 2001 up to July 2005, which she illegally credited to herself.

4. to Order respondent to pay [petitioners] the total amount of Php. 64,173.83 plus interest, which is her outstanding cash advances.

5. to Order respondent to pay [petitioners] moral damages in the amount of Php100,000.00 and exemplary damages in the amount of Php50,000.00

Other relief just and equitable is likewise prayed for.[26]

The instant Petition is partly meritorious.

For a valid dismissal of an employee, it is fundamental that the employer observe both substantive and procedural due process – the termination of employment must be based on a just or

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

[26] *Id*. at 43.

authorized cause and the dismissal can only be effected, after due notice and hearing.[27] Petitioners' compliance with procedural due process in dismissing respondent is no longer being challenged in the present Petition; the issues for review of the Court herein essentially involve substantive due process.

Under Article 282(c) of the Labor Code, as amended, an employer may terminate an employment for, among other just causes, fraud or willful breach by the employee of the trust reposed in him/her by his/her employer or duly authorized representative. In *Etcuban, Jr. v. Sulpicio Lines, Inc.*,[28] the Court expounded on this particular just cause for dismissal of an employee:

> Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. Loss of confidence as a just cause for termination of employment is premised from the fact that an employee concerned holds a position of trust and confidence. This situation holds where a person is entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. But, in order to constitute a just cause for dismissal, the act complained of must be "work-related" such as would show the employee concerned to be unfit to continue working for the employer.
>
> The degree of proof required in labor cases is not as stringent as in other types of cases. It must be noted, however, that recent decisions of this Court have distinguished the treatment of managerial employees from that of rank and file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank and file personnel, loss of trust and confidence as ground for valid dismissal requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. **But as regards a managerial employee, the mere existence of a basis for believing**

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[27] *Sang-an v. Equator Knights Detective and Security Agency, Inc.*, 703 Phil. 492, 502-503 (2013).

[28] 489 Phil. 483, 496-497 (2005).

that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded by his position.

In the present case, the petitioner is not an ordinary rank and file employee. The petitioner's work is of such nature as to require a substantial amount of trust and confidence on the part of the employer. Being the Chief Purser, he occupied a highly sensitive and critical position and may thus be dismissed on the ground of loss of trust and confidence. One of the many duties of the petitioner included the preparation and filling up passage tickets, and indicating the amounts therein before being given to the passengers. More importantly, he handled the personnel funds of the MV Surigao Princess. Clearly, the petitioner's position involves a high degree of responsibility requiring trust and confidence. The position carried with it the duty to observe proper company procedures in the fulfillment of his job, as it relates closely to the financial interests of the company. (Emphasis supplied, citations omitted.)

Respondent, as Accounting Supervisor, was occupying a managerial position. The Court is not persuaded by respondent's assertion that even as Accounting Supervisor, she was still just a mere rank and file employee performing the same clerical functions she had since her hiring in 1994. In her own memorandum dated February 12, 2001 to petitioner Tambunting, respondent accepted the responsibilities of an Accounting Manager. Respondent underwent training for three months, received additional compensation, and was assigned an accounting assistant to help her out with her responsibilities. As Accounting Supervisor, respondent was entrusted with the custody and management of one of the most delicate matters of any business, that is, the financial resources of petitioner SMSI. Respondent also exercised discretion in the preparation of the payroll of the employees of petitioner SMSI, evident from the fact that it was by her own judgment call that she

granted and paid herself pro-rated ECOLA since November 2002.

The Court of Appeals actually affirmed the finding of the NLRC that respondent committed a breach of trust and confidence, and there is no cogent reason for the Court to disturb the same.

It was not disputed that respondent was earning more than minimum wage, so she was not one of the intended beneficiaries of ECOLA under Wage Order Nos. NCR-09 and NCR-10. Respondent though insisted that Wage Order Nos. NCR-09 and NCR-10 granted her the right to a pro-rated share of the ECOLA on the ground of wage distortion.

"Wage distortion" was defined under Rule I, Section 2(w) of the Rules Implementing Wage Order No. NCR-09 and Rule I, Section 2(x) of the Rules Implementing Wage Order No. NCR-10, as follows:

> "Wage Distortion" refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

Section 14 of Wage Order No. NCR-09 covered situations wherein wage distortions result from the application of the ECOLA:

> Section 14. Where the application of the emergency cost of living allowance prescribed in this Order results in distortions in the wage structure within the establishment, the wage distortion may be resolved using the following formula:

$$\frac{\text{Minimum Wage Under WO-NCR-08}}{\text{Present Salary}} \times \text{Amount of ECOLA in WO-NCR-09} = \text{Amount of ECOLA due to distortion}$$

Section 13 of Wage Order No. NCR-10 no longer reproduced the formula for resolving wage distortions, but required instead

the application of the procedure for resolving wage distortions under Article 124 of the Labor Code,[29] as amended:

Section 13. Where the application of the emergency cost of living allowance prescribed in this Order results in distortions in the wage structure within the establishment, the distortion as corrected shall be paid as ECOLA in accordance with the procedure provided for under Article 124 of the Labor Code of the Philippines, as amended.

The NLRC and the Court of Appeals were correct in not giving much credence to respondent's claim of wage distortion,

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[29] Art. 124. *Standards/Criteria for Minimum Wage Fixing.* – x x x

x x x x x x x x x

Where the application of any prescribed wage increase by virtue of a law or Wage Order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from the wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or recognized labor unions, the employer and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute with in twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or Wage Order.

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

based on their observation that respondent was the only employee of petitioner SMSI earning more than minimum wage who was receiving ECOLA.

The Court additionally points out that other than respondent's bare allegation of wage distortion, there is an absolute dearth of proof to corroborate the same. It is an age-old rule that the one who alleges a fact has the burden of proving it and the proof should be clear, positive, and convincing. Mere allegation is not evidence.[30] By its definition, wage distortion is quantifiable, and it may be established by presentation of the employee groups, wage structure, and the computation showing how the application of the ECOLA eliminated or severely contracted the difference in wage or salary rates among the groups. As Accounting Supervisor who was in charge of preparation of the payroll of the employees of petitioner SMSI for more than a decade, respondent had knowledge of and access to all these relevant information and was capable of illustrating, even just by approximation, how she suffered from wage distortion because of the application of the ECOLA, which would have entitled her to pro-rated ECOLA under Section 14 of Wage Order No. NCR-09. However, respondent, apart from her insistence on the presence of wage distortion, was remarkably silent on any other detail concerning the purported wage distortion. It bears to stress further that the formula for computing pro-rated ECOLA in case of wage distortions was not reproduced in Wage Order No. NCR-10. Consequently, from the effectivity date of Wage Order No. NCR-10 on July 10, 2004, respondent's unilateral grant of pro-rated ECOLA to herself became even more evidently baseless.

Even assuming that respondent acted in good faith in granting herself ECOLA since November 2002, petitioners already explicitly ordered the cancellation of respondent's ECOLA through the Notice of Personnel Action dated August 22, 2005. Yet, in defiance of said Notice, respondent still continued to

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[30] *Noblejas v. Italian Maritime Academy Phils., Inc.*, G.R. No. 207888, June 9, 2014, 725 SCRA 570, 579.

grant and pay herself ECOLA until December 15, 2005. Respondent averred that she immediately took up the matter of said Notice with petitioner Tambunting who promised to look into it, but again, respondent's averment was unsubstantiated and lacked details which would have lent it some credibility. Granting once more that respondent's encounter with petitioner Tambunting was true, the Notice of Personnel Action dated August 22, 2005 was not officially recalled or reversed and, therefore, said Notice subsisted. The more prudent course of action for respondent was to comply with the Notice for the meantime. After being expressly ordered in the Notice to cancel her ECOLA, respondent could no longer claim good faith in continuing to grant herself said allowance.

Respondent herself referred to the amount of daily ECOLA she was receiving as "miniscule," but given that she had been receiving the unwarranted ECOLA since November 2002, it had already accumulated to a substantial amount. And regardless of the amount involved, it is apparent that respondent took advantage of her position as Accounting Supervisor in granting herself ECOLA even when she was not entitled to the same and after already being ordered to stop doing so, which constituted breach of trust. Willful breach of trust is one of the just causes under Article 282(c) of the Labor Code, as amended, for the employer to terminate the services of an employee.

Nevertheless, the Court of Appeals, after affirming the finding of the NLRC that respondent committed breach of trust, still declared that the penalty of dismissal was too harsh considering that respondent worked for petitioner SMSI for almost 12 years and the total amount of ECOLA respondent granted herself was already deducted from her last salary. For the same reasons, the appellate court awarded respondent only separation pay for her illegal dismissal, and not backwages.

The Court disagrees with the appellate court.

The law is plain and clear: willful breach of trust is a just cause for termination of employment. Necessarily, a finding of breach of trust on the part of respondent in the present case already justified her dismissal from service by petitioners. An

employer cannot be compelled to retain an employee who is guilty of acts inimical to the interests of the employer. A company has the right to dismiss its employees as a measure of protection, more so in the case of supervisors or personnel occupying positions of responsibility.[31] Together with petitioners' compliance with procedural due process, there is no other logical conclusion than that respondent's dismissal was valid.

In view of the valid dismissal from service of respondent, then she is not entitled to backwages, as well as separation pay in lieu of reinstatement. The award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code, as amended, and as held in a catena of cases, the employee who is dismissed without just cause and without due process is entitled to backwages and reinstatement or payment of separation pay in lieu thereof.[32]

Of particular significance to the case at bar are the following pronouncements of the Court in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa-Katipunan*[33]:

> We find no justification for the award of separation pay to Capor. This award is a deviation from established law and jurisprudence.
>
> The law is clear. Separation pay is only warranted when the cause for termination is not attributable to the employee's fault, such as those provided in Articles 283 and 284 of the Labor Code, as well as in cases of illegal dismissal in which reinstatement is no longer feasible. It is not allowed when an employee is dismissed for just cause, such as serious misconduct.
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> Jurisprudence has classified theft of company property as a serious misconduct and denied the award of separation pay to the erring employee. We see no reason why the same should not be similarly applied in the case of Capor. She attempted to steal the property of her long-time employer. For committing such misconduct, she is definitely not entitled to an award of separation pay.

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[31] *Santos v. San Miguel Corporation*, 447 Phil. 264, 276-277 (2003).

[32] *Macasero v. Southern Industrial Gases Philippines*, 597 Phil. 494, 501 (2009).

[33] 629 Phil. 247, 257-261 (2010).

It is true that there have been instances when the Court awarded financial assistance to employees who were terminated for just causes, on grounds of equity and social justice. The same, however, has been curbed and rationalized in *Philippine Long Distance Telephone Company v. National Labor Relations Commission*. In that case, we recognized the harsh realities faced by employees that forced them, despite their good intentions, to violate company policies, for which the employer can rightfully terminate their employment. For these instances, the award of financial assistance was allowed. But, in clear and unmistakable language, we also held that the award of financial assistance shall not be given to validly terminated employees, whose offenses are iniquitous or reflective of some depravity in their moral character. **When the employee commits an act of dishonesty, depravity, or iniquity, the grant of financial assistance is misplaced compassion. It is tantamount not only to condoning a patently illegal or dishonest act, but an endorsement thereof. It will be an insult to all the laborers who, despite their economic difficulties, strive to maintain good values and moral conduct.**

In fact, in the recent case of *Toyota Motors Philippines, Corp. Workers Association (TMPCWA) v. National Labor Relations Commission*, we ruled that separation pay shall not be granted to all employees who are dismissed on any of the four grounds provided in Article 282 of the Labor Code. Such ruling was reiterated and further explained in *Central Philippines Bandag Retreaders, Inc. v. Diasnes*:

> To reiterate our ruling in *Toyota*, labor adjudicatory officials and the CA must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Art. 282 of the Labor Code that sanction dismissals of employees. They must be most judicious and circumspect in awarding separation pay or financial assistance as the constitutional policy to provide full protection to labor is not meant to be an instrument to oppress the employers. The commitment of the Court to the cause of labor should not embarrass us from sustaining the employers when they are right, as here. In fine, we should be more cautious in awarding financial assistance to the undeserving and those who are unworthy of the liberality of the law.

We are not persuaded by Capor's argument that despite the finding of theft, she should still be granted separation pay in light of her long years of service with petitioners. We held in *Central Pangasinan Electric Cooperative, Inc. v. National Labor Relations Commission* that:

> Although long years of service might generally be considered for the award of separation benefits or some form of financial assistance to mitigate the effects of termination, this case is not the appropriate instance for generosity x x x. The fact that private respondent served petitioner for more than twenty years with no negative record prior to his dismissal, in our view of this case, does not call for such award of benefits, since his violation reflects a regrettable lack of loyalty and worse, betrayal of the company. If an employee's length of service is to be regarded as justification for moderating the penalty of dismissal, such gesture will actually become a prize for disloyalty, distorting the meaning of social justice and undermining the efforts of labor to clean its ranks of undesirables.

Indeed, length of service and a previously clean employment record cannot simply erase the gravity of the betrayal exhibited by a malfeasant employee. Length of service is not a bargaining chip that can simply be stacked against the employer. After all, an employer-employee relationship is symbiotic where both parties benefit from mutual loyalty and dedicated service. If an employer had treated his employee well, has accorded him fairness and adequate compensation as determined by law, it is only fair to expect a long-time employee to return such fairness with at least some respect and honesty. Thus, **it may be said that betrayal by a long-time employee is more insulting and odious for a fair employer**. As stated in another case:

> x x x The fact that [the employer] did not suffer pecuniary damage will not obliterate respondent's betrayal of trust and confidence reposed by petitioner. Neither would his length of service justify his dishonesty or mitigate his liability. **His length of service even aggravates his offense. He should have been more loyal to petitioner company from which he derived his family bread and butter for seventeen years.**

While we sympathize with Capor's plight, being of retirement age and having served petitioners for 39 years, we cannot award any financial assistance in her favor because it is not only against

the law but also a retrogressive public policy. We have already explained the folly of granting financial assistance in the guise of compassion in the following pronouncements:

> x x x Certainly, a dishonest employee cannot be rewarded with separation pay or any financial benefit after his culpability is established in two decisions by competent labor tribunals, which decisions appear to be well-supported by evidence. To hold otherwise, even in the name of compassion, would be to send a wrong signal not only that "crime pays" but also that one can enrich himself at the expense of another in the name of social justice. And courts as well as quasi-judicial entities will be overrun by petitioners mouthing dubious pleas for misplaced social justice. Indeed, before there can be an occasion for compassion and mercy, there must first be justice for all. Otherwise, employees will be encouraged to steal and misappropriate in the expectation that eventually, in the name of social justice and compassion, they will not be penalized but instead financially rewarded. Verily, a contrary holding will merely encourage lawlessness, dishonesty, and duplicity. These are not the values that society cherishes; these are the habits that it abhors. (Emphases supplied, citations omitted.)

Hence, respondent's length of service of 11 years at petitioner SMSI did not mitigate, but even aggravated her offense, demonstrating, in addition to her insubordination and dishonesty, her lack of loyalty. It is likewise worthy to note that respondent, through her years of employment, was charged with the commission of several other transgressions, to wit: failing to regularly deduct from her salary the payment for her cash advances which already amounted to ₱64,173.83; leaving unused bank checks unattended on her desk even though she was provided a safe/vault in which she was supposed to keep all pertinent bank documents; leaving the safe/vault unlocked; failing to submit reports on time; instructing other people to punch in her time card several times; failing to hand over the office keys to the guard on duty as company rules prescribed; and having shortages in the payroll. These administrative charges of previous acts of dishonesty or negligence form part of respondent's employment record and which the petitioners could also very

well consider in finally deciding to impose upon respondent the ultimate penalty of dismissal for her latest infraction.

Also contrary to the ruling of the Court of Appeals, petitioners are not divested of their right to terminate the employment of respondent just because the amount of ECOLA which respondent unlawfully granted herself for three years was eventually deducted from her last salary. It was only proper that petitioners recover from respondent what did not rightfully pertain to the latter, otherwise, respondent would have unjustly enriched herself at petitioners' expense; but said recovery by petitioners still would not erase the fact that respondent willfully breached petitioners' trust. Moreover, as petitioners clarified, what was deducted from respondent's last salary was only the amount of ECOLA she still granted herself after the issuance of the Notice of Personnel Action dated August 22, 2005, which was for the period of August 2005 to December 2005. Respondent is still liable to return to petitioners the ECOLA she granted herself from November 2002 to July 2005. For this purpose, the case shall be remanded to the Labor Arbiter for computation of the exact amount of ECOLA which respondent must pay back to petitioner SMSI.

Unlike the unwarranted ECOLA, however, the Court cannot order respondent to pay her outstanding cash advances from petitioner SMSI, allegedly amounting to ₱64,173.83.

In *Bañez v. Valdevilla*,[34] the Court recognized that the jurisdiction of Labor Arbiters and the NLRC in Article 217[35]

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[34] 387 Phil. 601, 608 (2000).

[35] Art. 217. *Jurisdiction of the 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, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;

(2) Termination disputes;

of the Labor Code, as amended, is comprehensive enough to include claims for all forms of damages "arising from the employer-employee relations." Whereas the Court in a number of occasions had applied the jurisdictional provisions of Article 217 to claims for damages filed by employees, it also held that by the designating clause "arising from the employer-employee relations," Article 217 should apply with equal force to the claim of an employer for actual damages against its dismissed employee, where the basis for the claim arises from or is necessarily connected with the fact of termination, and should be entered as a counterclaim in the illegal dismissal case.

Petitioners' counterclaim for payment of respondent's outstanding cash advances, although undoubtedly arising from employer-employee relations between petitioners and respondent, did not arise from or was not necessarily connected with the fact of respondent's termination. To recall, petitioners terminated respondent's employment on the ground that respondent, in granting herself unwarranted ECOLA, willfully breached the trust reposed in her by petitioners as Accounting Supervisor.

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(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

(5) Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

(6) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding Five thousand pesos (₱5,000.00), regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

Respondent's failure to make the necessary deductions from her salary to pay for her cash advances from petitioner SMSI was clearly another transgression petitioners were charging respondent with. While the Court may take cognizance herein of the fact that such a charge by petitioners against respondent exists, it has no jurisdiction to determine the truth or falsity of such charge. Such charge was not covered by the notices and hearing petitioners accorded respondent prior to the latter's dismissal and for the Court to rule upon the same in this case would be in violation of respondent's right to due process.

Finally, the Court denies petitioners' claims for moral and exemplary damages for utter lack of factual and legal bases.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. The Decision dated February 22, 2010 of the Court of Appeals in CA-G.R. SP No. 103847 is **AFFIRMED** with the following **MODIFICATIONS**: (1) the award of separation pay to respondent Lanie M. Labitigan is **DELETED**; (2) the Decision dated January 31, 2008 of the NLRC in NLRC LAC No. 08-002292-07, dismissing for lack of merit respondent Lanie M. Labitigan's complaint for illegal dismissal against petitioners Supra Multi-Services, Inc., Jesus S. Tambunting, Jr., and Rita Clair T. Dabu, is **AFFIRMED**; (3) respondent Lanie M. Labitigan is **ORDERED** to pay back petitioner Supra Multi-Services, Inc. the amount of ECOLA she granted and paid to herself from November 2002 to July 2005, plus 6% interest from the time of finality of this judgment until the said amount is fully paid; and (4) the case is **REMANDED** to the Labor Arbiter for computation of the total amount respondent Lanie M. Labitigan is to pay back to petitioner Supra Multi-Services, Inc.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

SPECIAL THIRD DIVISION

[G.R. No. 196735. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DANILO FELICIANO, JR., JULIUS VICTOR MEDALLA, CHRISTOPHER SOLIVA, WARREN L. ZINGAPAN, and ROBERT MICHAEL BELTRAN ALVIR,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE GUILT OF AN ACCUSED MAY BE PROVED BY THE CREDIBLE AND POSITIVE TESTIMONY OF A SINGLE WITNESS.— The testimony of a single witness, as long as it is credible and positive, is enough to prove the guilt of an accused beyond reasonable doubt. x x x Accused-appellants were positively identified by private complainants. Private complainants' testimonies were clear and categorical. On this issue, we find no cogent reason to reverse our May 5, 2014 Decision.

2. ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; ALL THE CIRCUMSTANCES ATTENDING A CRIME, INCLUDING ANY CIRCUMSTANCE THAT MAY AGGRAVATE THE ACCUSED'S LIABILITY MUST BE ALLEGED THEREIN FOR THE ACCUSED TO BE ABLE TO ADEQUATELY PREPARE FOR HIS DEFENSE.— For an information to be sufficient, Rule 110, Section 6 of the Rules of Criminal Procedure requires that it 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." The purpose of alleging all the circumstances attending a crime, including any circumstance that may aggravate the accused's liability, is for the accused to be able to adequately prepare for his or her defense x x x. Here, the aggravating circumstance of "masks and/or other forms of disguise" was alleged in the

Informations to enable the prosecution to establish that the attackers intended to conceal their identities. Once this is established, the prosecution needed to prove how the witnesses were able to identify the attackers despite the concealment of identity. x x x Zingapan was sufficiently informed that he was being charged with the death of Dennis Venturina, committed through the circumstances provided. Based on this Information, Zingapan's counsel was able to formulate his defense, which was that of alibi. x x x Zingapan's right to be informed of the cause or nature of the accusation against him was not violated. The inclusion of the aggravating circumstance of disguise in the Informations did not prevent him from presenting his defense of alibi.

3. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; NOT ADVERSELY AFFECTED BY THE DELAY IN REPORTING THE CRIME IN CASE AT BAR, AS THE ALLEGED DELAY WAS CAUSED BY THE GRAVITY OF THE VICTIM'S INJURIES, THEIR DESIRE TO REPORT TO THE PROPER AUTHORITIES, AND THE WEEKEND.— The alleged delay in reporting the crime also does not cast doubt on private complainants' credibility. x x x The incident happened on a Thursday. On the evening of the incident, private complainants agreed that they would report the matter to the National Bureau of Investigation. On Friday, December 9, 1994, they were advised by their senior fraternity brothers to recuperate first from their injuries while their Grand Archon and Vice Grand Archon went to the National Bureau of Investigation to inquire on the procedure. They could not report the incident on December 10 and 11, 1994 because this was a Saturday and a Sunday. They were able to report to the National Bureau of Investigation on December 12, 1994, the Monday following the incident. The alleged delay in reporting was caused by the gravity of private complainants' injuries, their desire to report to the proper authorities, and the weekend. These circumstances are not enough to disprove their credibility as witnesses.

4. CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; THE ACQUITTAL OF SOME OF THE ACCUSED DOES NOT NECESSARILY PRECLUDE THE PRESENCE OF CONSPIRACY.— Conspiracy does not require that *all* persons charged in the information be found guilty. It only requires

that those who were found guilty conspired in committing the crime. The acquittal of some of the accused does not necessarily preclude the presence of conspiracy. Of the 10 accused in the Informations, four (4) were acquitted. The trial court was convinced that they were not present during the commission of the crime. Conspiracy cannot attach to those who were not properly identified. However, Alvir, Zingapan, Soliva, Medalla, and Danilo Feliciano, Jr. (Feliciano) were positively identified by eyewitnesses before the trial court. The prosecution's evidence was enough to convince the trial court, the Court of Appeals, and this Court that they were present during the December 8, 1994 incident and that they committed the crime charged in the Informations. We have also exhaustively examined the evidence on hand, as well as the assessments of the trial court and of the Court of Appeals, to determine that all five (5) of them conspired to commit the crimes with which they were charged. The trial court's acquittal of some of those charged in the Informations has no bearing on our finding that Alvir, Zingapan, Soliva, Feliciano, and Medalla are guilty beyond reasonable doubt.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; DUE TO THE PROHIBITION OF THE DEATH PENALTY DURING THE PENDENCY OF THE APPEAL BEFORE THE COURT OF APPEALS IN CASE AT BAR, THE HIGHEST PENALTY IT COULD IMPOSE WAS *RECLUSION PERPETUA*, AND ANY REVIEW OF THE COURT OF APPEALS DECISION BY THE SUPREME COURT WILL NEVER BE MANDATORY OR AUTOMATIC.— [T]he trial court's Decision dated February 28, 2002 found Alvir, Zingapan, Soliva, Feliciano, and Medalla guilty beyond reasonable doubt of the murder of Dennis Venturina and the attempted murder of Lachica, Fortes, Natalicio, Gaston, and Mangrobang, Jr. They were meted the death penalty, and the case was brought to this Court on automatic review. In view, however, of *People v. Mateo* and the Amended Rules to Govern Review of Death Penalty Cases, this Court referred the case to the Court of Appeals for review. A notice of appeal in this instance was unnecessary x x x [, pursuant to] Rule 122, Sections 3(d) and 10 of the Rules of Criminal Procedure, as amended x x x. The Court of Appeals was mandated to review the case with regard to *all* five (5) of the accused, now referred

to as accused-appellants, regardless of whether they filed a notice of appeal. The review is considered automatic. During the pendency of the appeal before the Court of Appeals, Congress enacted Republic Act No. 9346, which prohibited courts from imposing the death penalty. In its November 26, 2010 Decision, the Court of Appeals affirmed the trial court's finding that accused-appellants were guilty beyond reasonable doubt of the murder of Dennis Venturina. In view of the proscription on death penalty, the Court of Appeals modified the imposable penalty from death to *reclusion perpetua*. However, the Court of Appeals disagreed with the trial court's finding that accused-appellants were likewise guilty of attempted murder with regards Lachica, Mangrobang, Jr., and Gaston. x x x Only three (3)—namely: Soliva, Alvir, and Zingapan—of the five (5) accused-appellants filed their respective Notices of Appeal before this Court. x x x The problem lies with the effect of the prohibition of death penalty on the current rules on appeal in the Rules of Criminal Procedure. The amendments introduced in the Amended Rules to Govern Review of Death Penalty Cases still stand even if, as this Court has previously mentioned, "death penalty cases are no longer operational." x x x [T]his Court ruled that the appeal could still be withdrawn as cases where the penalty imposed is *reclusion perpetua* or higher is not subject to this Court's mandatory review. x x x Here, the trial court's ruling mandated an automatic review and the case was forwarded to the Court of Appeals per *Mateo* and the Amended Rules to Govern Review of Death Penalty Cases. As the death penalty was abolished during the pendency of the appeal before the Court of Appeals, the highest penalty the Court of Appeals could impose was *reclusion perpetua*. Any review of the Court of Appeals Decision by this Court will never be mandatory or automatic.

6. ID.; ID.; ID.; AN UNFAVORABLE DECISION ON APPEAL MUST NOT AFFECT THOSE WHO DID NOT APPEAL.— [W]hile we can review the case in its entirety and examine its merits, we cannot disturb the penalties imposed by the Court of Appeals on those who did not appeal, namely, Feliciano and Medalla. This is consistent with Rule 122, Section 11(a) of the Rules of Criminal Procedure x x x. As our May 5, 2014 Decision was *unfavorable* to accused-appellants, those who did not appeal must not be affected by our judgment. The penalty

of *arresto menor* imposed by the Court of Appeals on Feliciano and Medalla in Criminal Case Nos. Q95-61134, Q95-61135, and Q95-61136 stands.

7. CRIMINAL LAW; REVISED PENAL CODE; CRIMES; FRATERNITY-RELATED VIOLENCE; NATURE.— Death or injuries caused by fraternity rumbles are not treated as separate or distinct crimes, unlike deaths or injuries as a result of hazing. They are punishable as ordinary crimes of murder, homicide, or physical injuries under the Revised Penal Code. The prosecution of fraternity-related violence, however, is harder than the prosecution of ordinary crimes. Most of the time, the evidence is merely circumstantial. The reason is obvious: loyalty to the fraternity dictates that *brods* do not turn on their *brods.* A crime can go unprosecuted for as long as the brotherhood remains silent. x x x The secrecy that surrounds the traditions and practices of a fraternity becomes problematic on an evidentiary level as there are no set standards from which a fraternity-related crime could be measured. In *People v. Gilbert Peralta*, this Court could not consider a fraternity member's testimony biased without any prior testimony on fraternity behavior x x x. The inherent difficulty in the prosecution of fraternity-related violence forces the judiciary to be more exacting in examining all the evidence on hand, with due regard to the peculiarities of the circumstances.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

De Castro & Cagampang Law Firm for appellant Christopher Soliva.

Villareal Rosacia Diño & Patag for appellant R.M.B. Alvir.

Estelito P. Mendoza for appellant Zingapan.

R E S O L U T I O N

LEONEN, *J.*:

Even as the judiciary strives to bring justice to victims of fraternity-related violence, the violence continues to thrive in universities across the country. Mere weeks after our Decision

dated May 5, 2014 was promulgated, various news agencies reported the death of an 18-year-old student of De La Salle-College of St. Benilde.[1] The death was allegedly caused by hazing.

While this Court is powerless to end this madness, it can, at the very least, put an end to its impunity.

This resolves the separate Motions for Reconsideration of our Decision dated May 5, 2014, which were filed by accused-appellants Christopher Soliva (Soliva),[2] Warren L. Zingapan (Zingapan),[3] and Robert Michael Beltran Alvir (Alvir).[4]

To recall, we affirmed the Court of Appeals Decision[5] dated November 26, 2010 finding accused-appellants guilty beyond reasonable doubt for the murder of Dennis Venturina. However, we modified its finding that accused-appellants were only guilty of slight physical injuries in relation to private complainants Leandro Lachica, Cristobal Gaston, Jr., and Cesar Mangrobang, Jr. Instead, we upheld the trial court's Decision[6] dated February 28, 2002, which found accused-appellants guilty beyond reasonable doubt of the attempted murder of private complainants

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[1] *See* Rainier Allan Ronda, *St. Benilde sophomore dies in fraternity hazing,* The Philippine Star, June 30, 2014 <http://www.philstar.com/headlines/2014/06/30/1340614/st.benilde-sophomore-dies-fraternity-hazing> (visited August 1, 2016); *St. Benilde student dies in suspected hazing incident,* Rappler, June 29, 2014 (visited August 1, 2016); Julliane Love De Jesus, *Cops eye 11 fraternity men as suspects in Servando fatal hazing,* Philippine Daily Inquirer, June 30, 2014 <http://newsinfo.inquirer.net/615653/cops-eye-11-fraternity-men-as-suspects-in-servando-fatal-hazing> (visited August 1, 2016).

[2] *Rollo,* pp. 596-624.

[3] *Id*. at 500-592.

[4] *Id*. at 480-499.

[5] *Id*. at 4-74-A. The Decision was penned by Presiding Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Amelita G. Tolentino, Jose C. Reyes, Jr., and Mariflor P. Punzalan-Castillo of the Special First Division, Division of Five. Associate Justice Stephen C. Cruz dissented.

[6] CA *rollo,* pp. 133-215. The Decision was penned by Presiding Judge Jose Catral Mendoza (now Associate Justice of this Court) of Branch 219, Regional Trial Court, Quezon City.

Leandro Lachica (Lachica), Arnel Fortes (Fortes), Mervin Natalicio (Natalicio), Cristobal Gaston, Jr. (Gaston), and Cesar Mangrobang, Jr. (Mangrobang, Jr.).

Alvir, Zingapan, and Soliva separately filed their Motions for Reconsideration on July 1, 2014, July 2, 2014, and July 9, 2014, respectively. The Office of the Solicitor General was directed to file a Consolidated Comment on these Motions.[7]

Atty. Estelito Mendoza, counsel for Zingapan, through a letter[8] dated May 22, 2014, requested information on the composition of the Division trying this case. At that time, our May 5, 2014 Decision was not yet published in the Supreme Court website. Atty. Estelito Mendoza's request was denied[9] under Rule 7, Section 3 of the Internal Rules of the Supreme Court,[10] which mandates that results of a raffle, including the composition of the Division, are confidential in criminal cases where the trial court imposes capital punishment.

Undaunted, Zingapan moved to elevate the case to this Court En Bane.[11] The Motion was denied for lack of merit.[12]

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[7] *Rollo,* p. 636.

[8] *Id*. at 594.

[9] *Id*. at 478.

[10] RULES OF COURT, Rule 7, Sec. 3 provides:

Section 3. *Raffle Committee Secretariat*. — The Clerk of Court shall serve as the Secretary of the Raffle Committee. He or she shall be assisted by a court attorney, duly designated by the Chief Justice from either the Office of the Chief Justice or the Office of the Clerk of Court, who shall be responsible for (a) recording the raffle proceedings and (b) submitting the minutes thereon to the Chief Justice. The Clerk of Court shall make the result of the raffle available to the parties and their counsels or to their duly authorized representatives, except the raffle of (a) bar matters; (b) administrative cases; and (c) criminal cases where the penalty imposed by the lower court is life imprisonment, and which shall be treated with strict confidentiality.

[11] *Rollo*, pp. 626-635.

[12] *Id*. at 636-637.

On November 10, 2014, the Office of the Solicitor General filed its Consolidated Comment[13] on the Motions for Reconsideration.

Meanwhile, Alvir moved for modification of judgment,[14] arguing on his innocence and praying for his acquittal.

The only issue to be resolved is whether accused-appellants presented substantial arguments in their Motions for Reconsideration as to warrant the reversal of this Court's May 5, 2014 Decision.

I

Soliva argues that his conviction was merely based on private complainant Natalicio's sole testimony, which he alleges was doubtful and inconsistent.[15] He points out that prosecution witness Ernesto Paolo Tan (Tan) was able to witness the attack on Natalicio, but was unable to identify him as the attacker.[16]

The Office of the Solicitor General, on the other hand, argues that Natalicio's testimony was sufficient to identify Soliva.[17] It argues that Tan's testimony did not contradict Natalicio's testimony since Tan was able to state that he saw the assailants who were not masked, though he did not know their names.[18]

The testimony of a single witness, as long as it is credible and positive, is enough to prove the guilt of an accused beyond reasonable doubt.[19]

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[13] *Id*. at 701-740.

[14] *Id*. at 693-700.

[15] *Id*. at 599.

[16] *Id*. at 600.

[17] *Id*. at 712-713.

[18] Id. at 716-717.

[19] *People v. Jalbonian,* 713 Phil. 93, 95 (2013) [Per *J*. Del Castillo, Second Division], *citing People v. Gonzales,* G.R. No. 105689, February 23, 1994, 230 SCRA 291, 296 [Per *J*. Bidin, Third Division] states: "Well-settled is the rule that the testimony of a lone prosecution witness, as long

Soliva argues that Natalicio was not able to identify his attackers since he was seen by Tan lying face down as he was being attacked. On the contrary, Natalicio's and Tan's testimonies were consistent as to Natalicio's position during the attack. Natalicio testified:

Q With respect to the first group that attacked you, Mr. Natalicio, while they were beating you up, what else if anything happened?

A I was able to recognize two (2) among those [sic] first group of attackers.

COURT

What group, first group?

. . . . . .

A While I was parrying their blows, two (2) of these attackers had no mask, they had no mask anymore.

. . . . . .

Q So, Mr. Natalicio, who were these two (2) men that you recognized?

A They were Warren Zingapan and Christopher Soliva.[20]

Cross-examination

Q Imagine, Mr. Witness, there were ten (10) people ganging up on you, you stood up, faced them, just like that?

A Yes.

Q You did not cover your head with your arms as they were pounding on you?

A Not yet. When I was standing up, no. I was parrying their blows. I covered my head when I fell down already, because I was defenseless already.

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as it is credible and positive, can prove the guilt of the accused beyond reasonable doubt."

[20] TSN, July 3, 1995, pp. 10-16.

Q And there were people [who] attacked you from behind?

A When I was standing up, none.

Q All of them were in front of you?

A Front, yes.[21]

Natalicio explained that he was attacked twice. During the first attack, he tried to stand up and was able to identify two (2) of his attackers. He fell to the ground when he was attacked the second time. This is consistent with Tan's testimony, where he stated:

A During the second waive [sic], your honor, *[Natalicio] tried to get up* but immediately after the first waive [sic] another group of persons attacked, your honor.

COURT

Q When he tried to get up, he was still facing the ground?

A He was a bit tilted, your honor. *He was no longer lying face down or* "*nakadapa*," your honor.[22] (Emphasis supplied)

Soliva also misconstrues Tan's testimony that he could not identify Natalicio's attackers. Tan testified:

Q You stated that while you were inside the beach house canteen observing the events outside thru the door and in that couple of seconds, you could not establish the identity of persons, is it not?

A *I could see them although I do not know their names.*[23] (Emphasis supplied)

Tan failed to identify the attackers only because he did not know their names. His testimony corroborates Natalicio's testimony that some of the attackers were masked and some were not,[24] although Tan could not identify them because he was not familiar with their names.

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[21] *Id*. at 55.

[22] TSN, September 3, 1996, pp. 73-74.

[23] TSN, September 18, 1996, pp. 82-83.

[24] TSN, September 3, 1996, p. 42.

Tan was a fourth year student of the University of the Philippines College of Business Administration at the time of the incident. He was not part of the Sigma Rho Fraternity and was merely one of the students eating at Beach House Canteen on December 8, 1994.[25]

Another witness, Darwin Asuncion (Asuncion), was a third year student at the University of the Philippines and was also at Beach House Canteen during the incident.[26] He testified that some attackers were wearing masks while some were not.[27] On cross-examination, he stated:

Q And many of these people who were in beach house canteen who were there to probably eat or probably lining up to eat were not wearing mask? [sic]

A Yes sir.

Q *And there is a great possibility that you could have mistaken the unmasked people as part of the attacking group?*

A *No sir.*

Q *Why?*

A *Because they were carrying lead pipes and baseball bats sir.*[28] (Emphasis supplied)

Asuncion's testimony corroborates that of defense witness Frisco Capilo, who testified that before the incident, the attackers were wearing masks, but after the incident, he saw some wearing masks and some who did not.[29]

Alvir argues that Lachica's identification of him was "uncorroborated and hazy."[30] He argues that Lachica admitted

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[25] *Id.* at 15.

[26] TSN, April 30, 1997, pp. 6-7.

[27] *Id.* at 9.

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

[29] TSN, December 4, 1995, p. 47.

[30] *Rollo,* p. 481.

that while he was attacked, he covered his head with his forearms, which created doubt that he was able to see his attackers. He argues that Lachica's statement that he was still able to raise his head while parrying blows was impossible. Alvir also argues that when Lachica ran away and looked back at the scene of the crime, Lachica was only able to identify Julius Victor Medalla (Medalla) and Zingapan.[31]

It is in line with human experience that even while Lachica was parrying the blows, he would strive to identify his attackers. As has been previously stated by this Court:

> It is the most natural reaction for victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from their memory.[32]

Lachica clearly and categorically identified Alvir as one of his attackers:

Q And during these attacks of these five (5) men and according to you, you were parrying their blows, what happened?

A At that time, one of the mask [sic] of those who attacked us fell off and I was able to recognize one of them.

Q Who did you recognize whose mask fell?

A He was Mike Alvir.[33]

Alvir also misinterprets Lachica's testimony that Lachica was unable to see Alvir as he was running away. Lachica testified:

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[31] *Id*. at 485.

[32] *People v. Dolar,* 301 Phil. 420, 430 (1994) [Per *J*. Puno, Second Division], citing *People v. Sartagoda,* 293 Phil. 259, 266 (1993) [Per *J*. Campos, Jr., Second Division]. See also *People v. Selfaison,* 110 Phil. 839, 845-846 (1961) [Per *J*. Gutierrez-David, *En Banc*].

[33] TSN, June 5, 1995, pp. 11-12.

Q What happened after as you said you parried the blows of the men who attacked you and you recognized one of them to be Mike Alvir. What happened next?

A As I said, I was able to elude these five armed men and run towards the College of Education and prior to reaching the College of Education, I tried to look back.

Q And what happened when you looked back?

A *I was able to see also, identify two more of them.* Two of the attackers.

Q Who are these persons?

A Warren Zingapan and Victor Medalla.[34] (Emphasis supplied)

Lachica testified that he was able to identify Alvir while he was being attacked. When Lachica ran away and looked back at the scene of the crime, he was also able to identify two (2) *more* of the attackers, Zingapan and Medalla. He did not deny seeing Alvir, but only added that he was able to identify two (2) more people.

Accused-appellants were positively identified by private complainants. Private complainants' testimonies were clear and categorical. On this issue, we find no cogent reason to reverse our May 5, 2014 Decision.

II

Zingapan's main argument hinges on the sufficiency of the Information filed against him, which, he argues, violated his constitutional right to be informed of the nature and cause of the accusation against him.[35] His arguments, however, have already been sufficiently addressed in our May 5, 2014 Decision.

For an information to be sufficient, Rule 110, Section 6 of the Rules of Criminal Procedure requires that it state:

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[34] *Id.* at 13.

[35] *Rollo,* pp. 510-523.

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.

The purpose of alleging all the circumstances attending a crime, including any circumstance that may aggravate the accused's liability, is for the accused to be able to adequately prepare for his or her defense:

> To discharge its burden of informing him of the charge, the State must specify in the information the details of the crime and any circumstance that aggravates his liability for the crime. *The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with.* To have the facts stated in the body of the information determine the crime of which he stands charged and for which he must be tried thoroughly accords with common sense and with the requirements of plain justice[.][36] (Emphasis supplied)

Here, the aggravating circumstance of "masks and/or other forms of disguise"[37] was alleged in the Informations to enable the prosecution to establish that the attackers intended to conceal their identities. Once this is established, the prosecution needed to prove how the witnesses were able to ft identify the attackers despite the concealment of identity. In our May 5, 2014 Decision:

> In criminal cases, disguise is an aggravating circumstance because, like nighttime, it allows the accused to remain anonymous and unidentifiable as he carries out his crimes.
>
> The introduction of the prosecution of testimonial evidence that tends to prove that the accused were masked but the masks fell off does not prevent them from including disguise as an aggravating

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[36] *People v. PO2 Valdez, et al.,* 679 Phil. 279, 293-294 (2012) [Per *J.* Bersamin, First Division].

[37] RTC records, Vol. I, p. 3.

circumstance. What is important in alleging disguise as an aggravating circumstance is that there was a *concealment of identity* by the accused. The inclusion of disguise in the information was, therefore, enough to sufficiently apprise the accused that in the commission of the offense they were being charged with, they tried to conceal their identity.[38] (Emphasis in the original)

To recall, the Information for murder filed against accused-appellants reads:

That on or about the 8th day of December 1994, in Quezon City, Philippines, the above-named accused, wearing masks and/or other forms of disguise, conspiring, confederating with other persons whose true names, identities and whereabouts have not as yet been ascertained, and mutually helping one another, with intent to kill, qualified with treachery, and with evident premeditation, taking advantage of superior strength, armed with baseball bats, lead pipes, and cutters, did then and there willfully, unlawfully and feloniously attack, assault and employ personal violence upon the person of DENNIS F. VENTURINA, by then and there hitting him on the head and clubbing him on different parts of his body thereby inflicting upon him serious and mortal injuries which were the direct and immediate cause of his death, to the damage and prejudice of the heirs of said DENNIS F. VENTURINA.[39]

Zingapan was sufficiently informed that he was being charged with the death of Dennis Venturina, committed through the circumstances provided.

Based on this Information, Zingapan's counsel was able to formulate his defense, which was that of alibi. He was able to allege that he was not at Beach House Canteen at the time of the incident because he was having lunch with his cousin's husband in Kamuning.[40] His defense had nothing to do with

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[38] *People v. Feliciano, Jr.,* G.R. No. 196735, May 5, 2014, 724 SCRA 148, 171 [Per *J.* Leonen, Third Division], citing *People v. Sabangan Cabato,* 243 Phil. 262 (1988) [Per *J.* Cortes, Third Division] and *People v. Veloso,* 197 Phil. 846 (1982) [Per Curiam, *En Banc*].

[39] RTC records, Vol. I, p. 3.

[40] CA *rollo,* pp. 165-166, Regional Trial Court Decision.

whether he might or might not have been wearing a mask during the December 8, 1994 incident since his main defense was that he was not there at all.

Zingapan's right to be informed of the cause or nature of the accusation against him was not violated. The inclusion of the aggravating circumstance of disguise in the Informations did not prevent him from presenting his defense of alibi.

III

Accused-appellants argue that the testimony of University of the Philippines Police Officers Romeo Cabrera (Cabrera) and Oscar Salvador (Salvador) and Dr. Carmen Mislang (Dr. Mislang) from the University of the Philippines Infirmary should have been given credibility by this Court.[41] They also insist that the victims' delay in reporting the incident casts doubt in their credibility as witnesses.[42] Unfortunately, these arguments fail to persuade.

Natalicio testified that he was unable to answer the queries of Cabrera and Salvador since he was more concerned with his injuries and the injuries of his companions.[43] He also denied that Dr. Mislang questioned him on the identity of his attackers.[44]

Even if it were true that Natalicio denied knowing his attackers when he was interviewed by Cabrera, Salvador, and Dr. Mislang, it did not cast doubt on accused-appellants' guilt. The conditions prevailing within the campus at the time of the incident must also be taken into account.

At the time of the incident, the University of the Philippines-Diliman had an existing policy that all students involved in fraternity rumbles would be expelled.[45] Cabrera, Salvador, and

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[41] *Rollo,* pp. 577 and 607.

[42] *Id.* at 494, 567-568, and 609-610.

[43] CA *rollo,* p. 177.

[44] *Id.* at 176-177.

[45] *Id.* at 193.

Dr. Mislang were employees of the University.[46] Reporting the incident as a fraternity rumble was risking expulsion.[47]

The investigation conducted by the University of the Philippines Police was met with the same difficulty, since the witnesses interviewed were reluctant to speak on fraternity matters:

> As of this date, operatives of the UP Diliman Police have already interviewed sixty (60) persons, twenty five (25) of them mostly students, *refused to comment or to give their names. Most of those who refused to comment said that they don't want to get involved in fraternity matters*[.][48] (Emphasis supplied)

Under these circumstances, private complainants chose to report the matter to the National Bureau of Investigation as an ordinary crime rather than to report it to school authorities. The University would have treated the matter as a fraternity-related campus incident where *all* parties involved, including private complainants who were also fraternity members, risk academic sanctions. At that time, private complainants decided that reporting to the National Bureau of Investigation, rather than to university officials, was the more prudent course of action.

The alleged delay in reporting the crime also does not cast doubt on private complainants' credibility. The trial court stated:

> [O]n the evening of December 8, 1994, the victims, upon the advice of their senior fraternity brothers, had agreed that the NBI would handle the investigation. This was reached during the fellowship of the Sigma Rho brothers in a racetrack in Makati which Lachica and Gaston attended. Lachica preferred the NBI because he wanted a thorough investigation in view of the gravity of the offense.

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[46] *Id*. at 170.

[47] *Id*. at 174.

[48] *Rollo,* p. 538, Zingapan's Motion for Reconsideration, *citing* Progress Report dated December 14, 1994, Exhibit "Z".

So, on the very next day, December 9, 1994, the Vice Grand Archon, Redentor Guerrero, went to the NBI and inquired about the procedure in filing a complaint. Thereafter, their then Grand Archon Jovy Bernabe, with Redentor Guerrero, informed them that they would be going to the NBI together. They were advised to rest and told that they would just be informed when they would go to the NBI. On the 11th, the two informed them that they would go to the NBI the next day and they did.[49]

The incident happened on a Thursday. On the evening of the incident, private complainants agreed that they would report the matter to the National Bureau of Investigation. On Friday, December 9, 1994, they were advised by their senior fraternity brothers to recuperate first from their injuries while their Grand Archon and Vice Grand Archon went to the National Bureau of Investigation to inquire on the procedure. They could not report the incident on December 10 and 11, 1994 because this was a Saturday and a Sunday. They were able to report to the National Bureau of Investigation on December 12, 1994, the Monday following the incident.[50]

The alleged delay in reporting was caused by the gravity of private complainants' injuries, their desire to report to the proper authorities, and the weekend. These circumstances are not enough to disprove their credibility as witnesses.

Soliva also takes exception to this Court's characterization that the University of the Philippines Police have become desensitized to fraternity-related violence.[51]

It is not disputed that the University of the Philippines has served as a common battleground for fraternity-related violence. In 2007, GMA News compiled a list of casualties of fraternity-related violence at the University of the Philippines.[52] Six (6)

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[49] CA *rollo*, p. 185.

[50] *Id*.

[51] *Rollo*, p. 612.

[52] *See Casualties of Frat-Related Violence,* GMA News Online, September 5, 2007 <http://www.gmanetwork.com/news/story/59204/news/casualties-of-frat-related-violence-in-up> (visited August 1, 2016).

students were reported to have died from fraternity-related violence before the December 8, 1994 incident at Beach House Canteen.

Even after the promulgation of our May 5, 2014 Decision, fraternity-related violence remained prevalent within the University. On July 4, 2014, the Office of the Chancellor issued a statement confirming another fraternity-related incident involving students of the University.[53] Another fraternity rumble was reported to have occurred on university grounds.[54] Although no casualties were reported in both incidents, these incidents only amplify the reality that fraternity-related violence continues to be rampant within the University.

The presence of the University of the Philippines Police or the severe sanctions imposed by university officials have done little to deter these crimes. The frequency of these incidents has become the University's cultural norm, where its students—and even university employees—simply regard it as part of university life.

IV

Alvir argues that this Court erred in finding conspiracy among all the accused since the trial court acquitted those who were identified by Mangrobang, Jr.[55] This argument, however, is non sequitur.

The trial court, in acquitting the other accused, stated:

> The foregoing should not be misinterpreted to mean that the testimony of Mangrobang was an absolute fabrication. The Court is not inclined to make such a declaration. The four accused were exonerated merely because they were afforded the benefit of the doubt

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[53] See Jee Y. Geronimo, *Upsilon involved in UP hazing that injured 17-year-old,* Rappler, July 4, 2014 <http://www.rappler.com/nation/62423-up-hazing-frat-upsilon-sigma-phi> (visited August 1, 2016).

[54] See Erica Sauler, *Frat violence on UP Day: 3 mauled, 5 arrested,* Inquirer News Online, June 20, 2015 <http://newsinfo.inquirer.net/699690/frat-violence-on-up-day-3-mauled-5-arrested> (visited August 1, 2016).

[55] *Rollo,* pp. 497-98.

as their identification by Mangrobang, under tumultuous and chaotic circumstances were not corroborated and their alibis, not refuted.[56]

In contrast, Lachica's identification of Alvir was given credibility by the trial court.[57] Alvir's alibi was also found to be weak.[58]

Conspiracy does not require that *all* persons charged in the information be found guilty. It only requires that those who were found guilty conspired in committing the crime. The acquittal of some of the accused does not necessarily preclude the presence of conspiracy.

Of the 10 accused in the Informations, four[59] (4) were acquitted. The trial court was convinced that they were not present during the commission of the crime. Conspiracy cannot attach to those who were not properly identified.

However, Alvir, Zingapan, Soliva, Medalla, and Danilo Feliciano, Jr. (Feliciano) were positively identified by eyewitnesses before the trial court. The prosecution's evidence was enough to convince the trial court, the Court of Appeals, and this Court that they were present during the December 8, 1994 incident and that they committed the crime charged in the Informations. We have also exhaustively examined the evidence on hand, as well as the assessments of the trial court and of the Court of Appeals, to determine that all five (5) of them conspired to commit the crimes with which they were charged. The trial court's acquittal of some of those charged in the Informations has no bearing on our finding that Alvir, Zingapan, Soliva, Feliciano, and Medalla are guilty beyond reasonable doubt.

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[56] CA *rollo,* p. 196.

[57] *Id*. at 198.

[58] *Id*.

[59] The case against Benedict Guerrero was archived by the trial court as authorities have not yet been able to arrest him, nor has he voluntarily submitted to the jurisdiction of the trial court.

Soliva, however, argues that our May 5, 2014 Decision did not apply to those who did not appeal to this Court, namely: Feliciano and Medalla.[60] At this point, a re-examination of the rules of appeal in criminal cases may be in order.

To recall the procedural incidents in this case, the trial court's Decision[61] dated February 28, 2002 found Alvir, Zingapan, Soliva, Feliciano, and Medalla guilty beyond reasonable doubt of the murder of Dennis Venturina and the attempted murder of Lachica, Fortes, Natalicio,

Gaston, and Mangrobang, Jr.[62] They were meted the death penalty, and the case was brought to this Court on automatic review.[63]

In view, however, of *People v. Mateo*[64] and the Amended Rules to Govern Review of Death Penalty Cases,[65] this Court referred the case to the Court of Appeals for review. A notice of appeal in this instance was unnecessary. Rule 122, Sections 3(d) and 10 of the Rules of Criminal Procedure, as amended, state:

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[60] *Rollo,* p. 620.

[61] CA *rollo,* pp. 133-215.

[62] *Id*. at 215.

[63] CONST., Art. VIII, Sec. 5(2)(d) provides:

SECTION 5. The Supreme Court shall have the following powers:

. . . . . .

(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:

. . . . . .

(d) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

[64] 477 Phil. 752 (2004) [Per *J*. Vitug, *En Banc*].

[65] Adm. Order No. 00-5-03-SC (2004).

RULE 122
APPEAL

. . . . . .

SEC. 3. *How appeal taken.*—

. . . . . .

(d) *No notice of appeal is necessary in cases where the Regional Trial Court imposed the death penalty. The Court of Appeals shall automatically review the judgment as provided in Section 10 of this Rule.* (3a)

. . . . . .

SEC. 10. *Transmission of records in case of death penalty. —In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Court of Appeals for automatic review and judgment* within twenty days but not earlier than fifteen days from the promulgation of the judgment or notice of denial of a motion for new trial or reconsideration. The transcript shall also be forwarded within ten days after the filing thereof by the stenographic reporter. (Emphasis supplied)

The Court of Appeals was mandated to review the case with regard to *all* five (5) of the accused, now referred to as accused-appellants, regardless of whether they filed a notice of appeal. The review is considered automatic.

During the pendency of the appeal before the Court of Appeals, Congress enacted Republic Act No. 9346,[66] which prohibited courts from imposing the death penalty. In its November 26, 2010 Decision,[67] the Court of Appeals affirmed the trial court's finding that accused-appellants were guilty beyond reasonable doubt of the murder of Dennis Venturina. In view of the proscription on death penalty, the Court of Appeals modified the imposable penalty from death to *reclusion perpetua*.[68]

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[66] An Act Prohibiting the Imposition of Death Penalty in the Philippines (2006).

[67] *Rollo,* pp. 4-74-A.

[68] Rep. Act No. 9346 (2006), Sec. 2 provides:

SECTION 2. In lieu of the death penalty, the following shall be imposed:

However, the Court of Appeals disagreed with the trial court's finding that accused-appellants were likewise guilty of attempted murder with regards Lachica, Mangrobang, Jr., and Gaston.[69] It stated that the gravity of their injuries was not indicative of accused-appellants' intent to kill.[70] Instead, the Court of Appeals modified the offense to slight physical injuries.[71] In other words, it found accused-appellants guilty of the murder of Dennis Venturina, the attempted murder of Fortes and Natalicio, and the slight physical injuries of Lachica, Mangrobang, Jr., and Gaston.[72]

Only three (3)—namely: Soliva, Alvir, and Zingapan—of the five (5) accused-appellants filed their respective Notices of Appeal before this Court. The Court of Appeals forwarded the records of the case to this Court, and the entire case was again opened for review under Rule 124, Section 13(b) and (c) of the Rules of Criminal Procedure:

RULE 124

SEC. 13. *Certification or appeal of case to the Supreme Court.*—

. . . . . .

(b) Where the judgment also imposes a lesser penalty for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more severe offense for which the penalty of death is imposed, and the accused appeals, the appeal shall be included in the case certified for review to, the Supreme Court.

(c) In cases where the Court of Appeals imposes *reclusion perpetua*, life imprisonment or a lesser penalty, it shall render and enter judgment imposing such penalty. *The judgment may be appealed to the Supreme*

(a) the penalty of *reclusion perpetua,* when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[69] *Rollo,* p. 63.

[70] *Id*.

[71] *Id*. at 64.

[72] *Id*. at 72-74.

Court by notice of appeal filed with the Court of Appeals. (Emphasis supplied)

In our May 5, 2014 Decision,[73] we reversed the Court of Appeals' modification of the offense from attempted murder to slight physical injuries.[74] We explained that the liabilities of accused-appellants arose from a single incident where the intent to kill was already evident from the first swing of the bat, and that intent was shared by all when the presence of conspiracy was proven. In effect, we affirmed the trial court's ruling that accused-appellants were guilty of the attempted murder of Lachica, Fortes, Natalicio, Gaston, and Mangrobang, Jr.[75]

According to Article 248[76] in relation to Article 51[77] of the Revised Penal Code, attempted murder is punishable by *prision*

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[73] *People v. Feliciano, Jr.,* G.R. No. 196735, 724 SCRA 148 [Per *J.* Leonen, Third Division].

[74] *Id*. at 191.

[75] *Id*.

[76] REV. PEN. CODE, Art. 248 provides:

ARTICLE 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[77] REV. PEN. CODE, Art. 51 provides:

mayor. Slight physical injuries, on the other hand, is punishable by *arresto menor*. The Court of Appeals, in modifying the offenses with regard to victims Lachica, Gaston, and Mangrobang, Jr., *lowered* some of the imposable penalties of accused-appellants. On appeal to this Court, however, we reverted to the findings of the trial court and brought back the *higher* offense of attempted murder. In this instance, the application of the higher penalty to accused-appellants becomes problematic when only three (3) of them actually appealed to this Court.

The problem lies with the effect of the prohibition of death penalty on the current rules on appeal in the Rules of Criminal Procedure. The amendments introduced in the Amended Rules to Govern Review of Death Penalty Cases still stand even if, as this Court has previously mentioned, "death penalty cases are no longer operational."[78]

In *People v. Rocha*,[79] this Court encountered a similar problem. The issue for resolution was whether the accused's Motion to Withdraw Appeal before this Court could be granted if the Court of Appeals imposed a penalty of *reclusion perpetua*.[80] The People were of the opinion that the appeal could not be withdrawn since this Court was mandated by the Constitution to review all cases where the penalty imposed is *reclusion perpetua* or higher.[81]

However, this Court ruled that the appeal could still be withdrawn as cases where the penalty imposed is *reclusion perpetua* or higher is not subject to this Court's mandatory review. Thus:

ARTICLE 51. Penalty to Be Imposed Upon Principals of Attempted Crimes. — The penalty lower by two degrees than that prescribed by law for theconsummated felony shall be imposed upon the principals in an attempt to commit a felony.

[78] *People v. Abon,* 569 Phil. 298, 307(2008) [Per *J*. Velasco, Jr., *En Banc*].

[79] 558 Phil. 521 (2007) [Per *J*. Chico-Nazario, Third Division].

[80] *Id*. at 528.

[81] *See* CONST., Art. VIII, Sec. 5(2)(d).

The confusion in the case at bar seems to stem from the effects of the Decision of this Court in *People v. Mateo*. In *Mateo*, as quoted by plaintiff-appellee, it was stated that "[w]hile the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is *reclusion perpetua*, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review." A closer study of *Mateo*, however, reveals that the inclusion in the foregoing statement of cases where the penalty imposed is *reclusion perpetua* and life imprisonment was only for the purpose of including these cases within the ambit of the intermediate review of the Court of Appeals: "[this] Court now deems it wise and compelling to provide in these cases [cases where the penalty imposed is *reclusion perpetua*, life imprisonment or death] review by the Court of Appeals before the case is elevated to the Supreme Court."

We had not intended to pronounce in Mateo that cases where the penalty imposed is reclusion perpetua or life imprisonment are subject to the mandatory review of this Court. In Mateo, these cases were grouped together with death penalty cases because, prior to Mateo, it was this Court which had jurisdiction to directly review reclusion perpetua, life imprisonment and death penalty cases alike. The mode of review, however, was different. Reclusion perpetua and life imprisonment cases were brought before this Court via a notice of appeal, while death penalty cases were reviewed by this Court on automatic review.

. . . . . .

After the promulgation of *Mateo* on 7 June 2004, this Court promptly caused the amendment of the foregoing provisions, but retained the distinction of requiring a notice of appeal for *reclusion perpetua* and life imprisonment cases and automatically reviewing death penalty cases.

. . . . . .

Neither does the Constitution require a mandatory review by this Court of cases where the penalty imposed is reclusion perpetua or life imprisonment. The constitutional provision quoted in Mateo merely gives this Court jurisdiction over such cases[.] . . .

. . . . . .

Since the case of accused-appellants is not subject to the mandatory review of this Court, the rule that neither the accused nor the courts can waive a mandatory review is not applicable. Consequently,

accused-appellants' separate motions to withdraw appeal may be validly granted.[82] (Emphasis supplied)

Here, the trial court's ruling mandated an automatic review and the case was forwarded to the Court of Appeals per *Mateo* and the Amended Rules to Govern Review of Death Penalty Cases. As the death penalty was abolished during the pendency of the appeal before the Court of Appeals, the highest penalty the Court of Appeals could impose was *reclusion perpetua*. Any review of the Court of Appeals Decision by this Court will never be mandatory or automatic.

In effect, while we can review the case in its entirety and examine its merits, we cannot disturb the penalties imposed by the Court of Appeals on those who did not appeal, namely, Feliciano and Medalla. This is consistent with Rule 122, Section 11 (a) of the Rules of Criminal Procedure:

RULE 122
APPEAL

SEC. 11. *Effect of appeal by any of several accused.* —

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter[.]

As our May 5, 2014 Decision was *unfavorable* to accused-appellants, those who did not appeal must not be affected by our judgment. The penalty of *arresto menor* imposed by the Court of Appeals on Feliciano and Medalla in Criminal Case Nos. Q95-61134, Q95-61135, and Q95-61136 stands.

In view, however, of *People v. Jugueta*[83] the damages previously awarded must also be increased. In *Jugueta*, we stated that "civil indemnity is, technically, not a penalty or a fine;

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[82] *People v. Rocha,* 558 Phil. 521, 530-535 (2007) [Per *J*. Chico-Nazario, Third Division], citing *People v. Mateo*, 477 Phil. 752, 770-771 (2004) [Per *J*. Vitug, *En Banc*].

[83] G.R. No. 202124, April 4, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file+/jurisprudence/2016/april2016/202124.pdf> [Per *J*. Peralta, *En Banc*].

hence, it can be increased by [this] Court when appropriate."[84] We also explained that the Civil Code did not fix the amount of moral damages, exemplary damages, and temperate damages that may be awarded; thus, the amount is within this Court's discretion to determine.[85]

In Criminal Case No. Q95-61133, the award of civil indemnity, moral damages, and exemplary damages are increased to ₱100,000.00,[86] respectively. The amount of temperate damages to be awarded is increased to ₱50,000.00.[87] In Criminal Cases Nos. Q95-61134, Q95-61135, Q95-61136, O95-61137, and Q95-61138, the award of moral damages and exemplary damages are increased to ₱50,000.00,[88] respectively.

V

Soliva takes exception to this Court's statements on fraternity culture and argued that these have no basis on facts or evidence.[89] Unfortunately, our May 5, 2014 Decision was not the first time that this Court expressed its sentiments on the issue of fraternity-related violence.

In *Villareal v. People*,[90] this Court found five (5) promising young men guilty beyond reasonable doubt of reckless impudence resulting in homicide for the death of Lenny Villa, an Ateneo law student and a neophyte of Aquila Legis Fraternity. This Court could only lament on accused-appellants' fate and the senseless loss of life in the name of a so-called "brotherhood," stating:

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[84] *Id.* at 14, citing *Corpuz v. People of the Philippines*, 734 Phil. 353, 416 (2014) [Per *J.* Peralta, *En Banc*].

[85] *Id.* at 15-18, 28.

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

[87] *Id.* at 34.

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

[89] *Rollo,* pp. 611-612.

[90] 680 Phil. 527 (2012) [Per *J.* Sereno, Second Division].

It is truly astonishing how men would wittingly — or unwittingly — impose the misery of hazing and employ appalling rituals in the name of brotherhood. There must be a better way to establish "kinship." A neophyte admitted that he joined the fraternity to have more friends and to avail himself of the benefits it offered, such as tips during bar examinations. Another initiate did not give up, because he feared being looked down upon as a quitter, and because he felt he did not have a choice. Thus, for Lenny Villa and the other neophytes, joining the Aquila Fraternity entailed a leap in the dark. *By giving consent under the circumstances, they left their fates in the hands of the fraternity members. Unfortunately, the hands to which lives were entrusted were barbaric as they were reckless.*[91] (Emphasis supplied

Indeed, the blind loyalty held by fraternity members to their "brothers" defies logic or reason.

In *People v. Colana,*[92] an innocent college student, Librado De la Vega (De la Vega), became collateral damage between two rival fraternities in Far Eastern University. When De la Vega passed Phi Lambda Epsilon officer Leonardo Colana's (Colana) group on his way to school, the head of Colana's fraternity told him that De la Vega was a member of Alpha Kappa Rho, their rival fraternity. The group approached De la Vega as Colana, armed with an ice pick, stabbed De la Vega repeatedly. They left De la Vega on the street to die.

On appeal, this Court affirmed the trial court's finding that Colana was guilty beyond reasonable doubt of murder, stating that "[m]otive for the killing was revenge. On a prior occasion some members of the Epsilon fraternity were beaten allegedly by members of the Alpha fraternity."[93]

This Court likewise briefly mentioned the senselessness of De la Vega's death:

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[91] *Id*. at 605.

[92] 211 Phil. 216 (1983) [Per *J*. Aquino, Second Division].

[93] *Id*. at 217.

What is lamentable is that De la Vega was not an FEU student, much less a member of the Alpha fraternity. He used to be an engineering student at the Feati University. At the time of his death, he was studying typing.[94]

Death or injuries caused by fraternity rumbles are not treated as separate or distinct crimes, unlike deaths or injuries as a result of hazing. They are punishable as ordinary crimes of murder, homicide, or physical injuries under the Revised Penal Code.

The prosecution of fraternity-related violence, however, is harder than the prosecution of ordinary crimes. Most of the time, the evidence is merely circumstantial. The reason is obvious: loyalty to the fraternity dictates that *brods* do not turn on their *brods.* A crime can go unprosecuted for as long as the brotherhood remains silent.

Perhaps the best person to explain fraternity culture is one of its own. Raymund Narag was among those charged in this case but was eventually acquitted by the trial court. In 2009, he wrote a blog entry outlining the culture and practices of a fraternity, referring to the fraternity system as "a big black hole that sucks these young promising men to their graves."[95] This, of course, is merely his personal opinion on the matter. However, it is illuminating to see a glimpse of how a fraternity member views his disillusionment of an organization with which he voluntarily associated. In particular, he writes that:

> The fraternities anchor their strength on secrecy. Like the Sicilian code of *omerta*, fraternity members are bound to keep the secrets from the non-members. They have codes and symbols the frat members alone can understand. They know if there are problems in campus by mere signs posted in conspicuous places. They have a different set [sic] of communicating, like inverting the spelling of words, so that ordinary conversations cannot be decoded by non-members.

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[94] *Id.* at 219.

[95] Raymund Narag, *Inside the brotherhood: Thoughts on Fraternity Violence,* The blog of Raymund Narag, December 10, 2009 <http://raymundnarag.wordpress.com/2009/12/10/inside-the-brotherhood-thoughts-on-fraternity-violence> (visited August 1, 2016).

It takes a lot of acculturation in order for frat members to imbibe the code of silence. The members have to be a mainstay of the *tambayan* to know the latest developments about new members and the activities of other frats. Secrets are even denied to some members who are not really in to [sic] the system. They have to earn a reputation to be part of the inner sanctum. It is a form of giving premium to become the "true blue member."

The code of silence reinforces the feeling of elitism. The fraternities are worlds of their own. They are sovereign in their existence. They have their own myths, conceptualization of themselves and worldviews. Save perhaps to their alumni association, they do not recognize any authority aside from the head of the fraternity.[96]

The secrecy that surrounds the traditions and practices of a fraternity becomes problematic on an evidentiary level as there are no set standards from which a fraternity-related crime could be measured. In *People v. Gilbert Peralta,*[97] this Court could not consider a fraternity member's testimony biased without any prior testimony on fraternity behavior:

Esguerra testified that as a fraternity brother he would do anything and everything for the victim. A witness may be said to be biased when his relation to the cause or to the parties is such that he has an incentive to exaggerate or give false color or pervert the truth, or to state what is false. To impeach a biased witness, the counsel must lay the proper foundation of the bias by asking the witness the facts constituting the bias. In the case at bar, there was no proper impeachment by bias of the three (3) prosecution witnesses. *Esguerra's testimony that he would do anything for his fellow brothers was too broad and general so as to constitute a motive to lie before the trial court. Counsel for the defense failed to propound questions regarding the tenets of the fraternity that espouse absolute fealty of the members to each other. The question was phrased so as to ask only for Esguerra's personal conviction*[.][98] (Emphasis supplied)

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[96] *Id*.

[97] 403 Phil. 72 (2001) [Per *J*. De Leon, Second Division].

[98] *Id*. at 88, citing *People v. Watin*, 67 OG 5901.

The inherent difficulty in the prosecution of fraternity-related violence forces the judiciary to be more exacting in examining all the evidence on hand, with due regard to the peculiarities of the circumstances. In this instance, we have thoroughly reviewed the arguments presented by accused-appellants in their Motions for Reconsideration and have weighed them against the evidence on hand. Unfortunately, their Motions have not given us cause to reconsider our May 5, 2014 Decision.

WHEREFORE, this Court resolves to **DENY with FINALITY** the Motions for Reconsideration, both dated July 1, 2014, of accused-appellants Robert Michael Beltran Alvir and Warren L. Zingapan. The Motion for Modification of Judgment dated October 30, 2014 filed by accused-appellant Robert Michael Beltran Alvir is **DENIED**.

The Motion for Reconsideration of accused-appellant Christopher Soliva, however, is **PARTLY GRANTED**. Judgment of the Court of Appeals is hereby **MODIFIED** as follows:

(1) In Criminal Case No. Q95-61133, accused-appellants Robert Michael Beltran Alvir, Danilo Feliciano, Jr., Christopher Soliva, Julius Victor Medalla, and Warren L. Zingapan are found **GUILTY** beyond reasonable doubt of murder and are sentenced to suffer the penalty of *reclusion perpetua*, without parole.

In addition, the accused-appellants are ordered to jointly and severally pay the heirs of Dennis Venturina the following amounts:

(a) ₱100,000.00 as civil indemnity;
(b) ₱139,642.70 as actual damages;
(c) ₱50,000.00 as temperate damages;
(d) ₱100,000.00 as moral damages; and
(e) ₱100,000.00 as exemplary damages.

(2) In Criminal Cases No. Q95-61134, Q95-61135, Q95-61136, Q95-61137, and Q95-61138, accused-appellants Robert Michael Beltran Alvir, Danilo Feliciano, Jr., Christopher Soliva, Julius Victor Medalla, and Warren

L. Zingapan are found **GUILTY** beyond reasonable doubt of attempted murder.

Accused-appellants Robert Michael Beltran Alvir, Christopher Soliva, and Warren L. Zingapan are sentenced to suffer the indeterminate penalty of two (2) years, six (6) months, and one (1) day of *prision correccional* as minimum and twelve (12) years of *prision mayor* as maximum.

Danilo Feliciano, Jr. and Julius Victor Medalla are sentenced to suffer *arresto menor,* or thirty (30) days of imprisonment.

In addition, all accused-appellants are ordered to jointly and severally pay private complainants Leonardo Lachica, Cesar Mangrobang, Jr., Cristobal Gaston, Jr., Mervin Natalicio, and Arnel Fortes the following amounts:

(a) ₱50,000.00 as moral damages; and
(b) ₱50,000.00 as exemplary damages.

Accused-appellants Robert Michael Beltran Alvir, Christopher Soliva, and Warren L. Zingapan are additionally ordered to jointly and severally pay private complainant Mervin Natalicio ₱820.50 as actual damages.

All awards of damages shall earn 6% legal interest per annum from the finality of this judgment until its full satisfaction.

SO ORDERED.

Sereno, C.J.,[*] *del Castillo,*[**] and *Perez,*[***] *JJ.,* concur.

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[*] Chief Justice Maria Lourdes P.A. Sereno was designated as Acting Member of the Third Division, vice Associate Justice Presbitero J. Velasco, Jr., per Raffle dated February 1, 2012.

[**] Associate Justice Mariano C. Del Castillo was designated as Acting Member of the Third Division, vice Associate Justice Jose Catral Mendoza who penned the Regional Trial Court Decision, per Raffle datedApril 29,2014.

[***] Associate Justice Jose P. Perez was designated as Acting Member of the Third Division, vice Associate Justice Roberto A. Abad who retired on

Peralta, J., (Acting Chairperson),[****] dissents and maintains his original opinion.

THIRD DIVISION

[G.R. No. 201106. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GERALD BALLACILLO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; AN ERRONEOUS SPECIFICATION OF THE LAW VIOLATED, DOES NOT VITIATE THE INFORMATION IF THE FACTS ALLEGED THEREIN CLEARLY RECITE THE FACTS CONSTITUTING THE CRIME CHARGED.— [I]t is noted that the four Informations filed against the accused charged him with the crime of rape under Act No. 3815, or the Revised Penal Code (*RPC*). Consequently, the RTC convicted and sentenced, as affirmed by the CA, Ballacillo for rape under Article 335 of the RPC. However, Republic Act (*R.A.*) No. 8353, otherwise known as the Anti-Rape Law of 1997, became effective on October 22, 1997. The law reclassified rape as a crime against persons, thus, repealing Article 335 of the RPC. The new provisions on the crime of rape are now found in Articles 266-A

May 22, 2014 and vice Associate Justice Francis H. Jardeleza who recused himself from the case due to prior action as Solicitor General, per Raffle dated September 8, 2014.

[****] Associate Justice Diosdado M. Peralta was designated as Acting Chairperson of the Third Division, vice Associate Justice Presbitero J. Velasco, Jr. who recused himself due to close relation to one of the parties.

to 266-D of the RPC. As established, the crime of rape was committed on April 14, 27, and 29, 1999. Thus, R.A. No. 8353, amending provisions of the RPC, is the law applicable in the instant case. The RTC and the CA erred in specifying violation of Article 335 of the RPC in convicting the accused of three counts of rape. Nevertheless, as we have recently ruled in the case of *People v. Victor P. Padit*, the failure to designate the offense by the statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged. Neither by the caption or preamble of the information nor by the specification of the provision of the law alleged to have been violated determines the character of the crime but by the recital of the ultimate facts and circumstances in the complaint or information. In this case, the acts alleged to have been committed by the accused are averred in the Informations, and the same describe acts punishable under Article 266-A, in relation to 266-B of the RPC, as amended.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S CONCLUSION THEREON IN RAPE CASES ARE GENERALLY ACCORDED GREAT RESPECT ON APPEAL.—** In almost all cases of sexual abuse, the credibility of the victim's testimony is crucial because more often than not, only the persons involved can testify as to its occurrence. Unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.

3. **ID.; ID.; ID.; IN RAPE CASES, YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH.—** Time and again, this Court held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her. Youth and immaturity are generally badges of truth. What is merely required in establishing

rape through testimonial evidence is that the victim be categorical, straightforward, spontaneous and frank in her statements about the incident of rape.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; CAN BE COMMITTED DESPITE THE PRESENCE OF OTHERS IN THE DWELLING, FOR SECLUSION IS NOT AN ELEMENT OF THE CRIME.— It has been shown repeatedly by experience that many instances of rape were committed not in seclusion but in very public circumstances. Thus, rape can be committed despite the presence of others in the dwelling for seclusion is not an element of the crime. As privacy is not a hallmark of the crime of rape, the presence of others in the same house did not easily deter the accused-appellant from imposing himself on the victim. Based on AAA's narration of the manner and the time the accused committed the crimes, it can be surmised that he made sure that the likelihood that the others discovering him in raping the victim would be minimal.

5. ID.; ID.; ID.; TENACIOUS RESISTANCE AGAINST RAPE IS NOT REQUIRED.— During the three incidents of rape, AAA was forced to submit to Ballacillo's lewdness out of fear for her life and that of her family. It was held that a youthful victim of serial rapes like AAA could not be expected to think and to act like a composed adult victim. There is no standard of behavior for all rape victims in the aftermath of their defilement, for people react differently to emotional stress for some may exhibit signs of stress, while others may act nonchalantly. Tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary. Moreover, failure to cry for help or attempt to escape during the rape is not fatal to the charge of rape; it does not make voluntary the victim's submission to appellant's lust. Rape through intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol. In this case, Ballacillo's knife and continual threats were enough to make AAA cower in fear and submit to his lust. The RTC and the CA did not err in finding that the accused employed enough force and intimidation to consummate his purpose.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY THE DELAY IN REPORTING THE RAPE TO THE POLICE

AUTHORITIES DUE TO THE CONSTANT THREATS OF VIOLENCE AND DEATH ON THE VICTIM AND HER KIN BY THE ACCUSED.— Delay in reporting a rape to the police authorities does not negate its occurrence nor does it affect the credibility of the victim. In the face of constant threats of violence and death, not just on the victim but extending to her kin, a victim may be excused for tarrying in reporting her ravishment. In the case at bar, AAA was constantly threatened by the accused. The fear instilled by such threats was magnified since AAA lived in the same house with Ballacillo who is her uncle, being her father's first cousin. AAA feared the reaction of her father, having a nasty temper, if he would discover her harrowing ordeal. We agree with the RTC that AAA's reasoning is straightforward, practical thinking and logical for a minor who fears loss of support for the family if her father is imprisoned. From the foregoing, the delay in reporting the rape is justified.

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

PERALTA, *J.*:

Before this Court is an appeal filed by accused-appellant Gerald Ballacillo (*Ballacillo*) assailing the June 30, 2011 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR.-HC No. 03648, which affirmed with modification the Decision[2] dated August 7, 2008 of the Regional Trial Court (*RTC*) of Bangued, Abra, Branch 2, in Criminal Cases No. 1999-419, 2000-21, 2000-22, 2000-23.

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Magdangal M. De Leon and Mario V. Lopez, concurring, *rollo*, pp. 2-22.

[2] Penned by Judge Corpus B. Alzate, CA *rollo*, pp. 130-156.

The accused Gerald Ballacillo was charged with the crime of rape in four (4) separate Informations, *viz.*:

Criminal Case No. 1999-419

That on the 14th day of April 1999, at 3:30 o'clock p.m., at Sitio Nagsayangan, Barangay Tagodtod, Municipality of Lagangilang, Province of Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], against her will and consent.

CONTRARY TO LAW.

Criminal Case No. 2000-21

That on or about April 17, 1999, in the evening, at Laang, Lagangilang, Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously and lasciviously [succeeded] in having carnal knowledge with his 15-year-old niece [AAA], against her will and consent, thereby impregnated (*sic*) her and for which reason she gave birth to a child on January 18, 2000.

CONTRARY TO ACT NO. 3815, as amended by Republic Act No. 7659

Criminal Case No. 2000-22

That on or about April 27, 1999 in the evening, at Laang, Lagangilang, Abra, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously and lasciviously [succeeded] in having carnal knowledge with his 15-year-old niece [AAA], against her will and consent, thereby impregnated (*sic*) her and for which reason she gave birth to a child on January 18, 2000.

CONTRARY TO ACT NO. 3815, as amended by Republic Act No. 7659

Criminal Case No. 2000-23

That on or about April 29, 1999 in the evening, at Laang, Lagangilang, Abra, Philippines and within the jurisdiction of this

Honorable Court, the above-named accused, with lewd designs, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously and lasciviously [succeeded] in having carnal knowledge with his 15-year-old niece [AAA], against her will and consent, thereby impregnated (*sic*) her and for which reason she gave birth to a child on January 18, 2000.

CONTRARY TO ACT NO. 3815, as amended by Republic Act No. 7659.[3]

Upon arraignment, Ballacillo pleaded not guilty to all four charges of rape. Thereafter, the trial on the merits ensued.

The evidence of the prosecution is summed up as follows:

At the request of his cousin, AAA's father, Ballacillo was staying at the house of AAA's parents in Laang, Lagangilang, Abra.[4] He helped in the household chores, and drove the family's passenger tricycle.

In the afternoon of April 14, 1999, AAA's mother asked Ballacillo to gather bamboo shoots (*rabong*) at Tagodtod.[5] He drove the tricycle, and went with AAA to a woody area in Nagsayangan, Tagodtod.[6] When they decided to return after an unsuccessful search for any bamboo shoot, Ballacillo called for AAA from beneath a mango tree. He forced AAA down, removed her shorts and underwear, and undressed himself. He poked a knife at AAA's neck, and quipped that "nobody can hear her scream." He inserted his penis into her vagina and made a push-and-pull movement. AAA struggled to flee but was overpowered by the stronger Ballacillo. She felt pain during the ordeal, and then felt something seeping from her vagina. Afterwards, Ballacillo stood up and dressed. While AAA cried, he nonchalantly told her to dress up and board the tricycle. He threatened to kill her and her family if she reported the incident.

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[3] *Rollo*, pp. 3-4.

[4] CA *rollo*, p. 132.

[5] *Id.* Also spelled as "Tagudtod" elsewhere in the records.

[6] CA *rollo*, p. 131.

Around midnight of April 27, 1999, AAA was asleep on a bamboo bed when she felt someone removing her shorts.[7] When she awakened, AAA saw Ballacillo on top of her bed. He covered her mouth, pushed her down, and threatened to kill her if she did not acquiesce. After undressing AAA and himself, Ballacillo inserted his penis into her vagina by making the push-and-pull movement. AAA felt hot fluid gushing into her vagina. After satiating his bestial desires, Ballacillo stood and threatened to kill AAA or her father if she informs her father of the harrowing episode.

The ordeal was repeated on April 29, 1999 with Ballacillo successfully satisfying his lewdness by threatening AAA with a knife if she screams and does not submit.

During the entire occurrence, Ballacillo remained living with them and continued driving the tricycle and doing household chores. AAA did not confide to anyone for fear that her father, who has a violent temper, might kill the accused if he discovers the same, and their family will be left with no support if her father is imprisoned.[8] It was only in September 1999 that AAA opened up to her friend. On October 13, 1999, AAA's mother was shocked when she learned through her cousin who was a teacher from AAA's school that her daughter was six months pregnant as a consequence of Ballacillo's abuse.[9]

AAA's testimony was corroborated by the medical findings of Dr. Liberty Banez who conducted a medical examination on AAA showing that since she was already six months pregnant with the last menstrual period in April 1999, the alleged incidents of rape coincided with the period of AAA's pregnancy.[10]

In contrast, Ballacillo fervently denied the charges against him. On April 8, 1999 to April 30, 1999, Ballacillo attended a

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[7] *Id.* at 134.

[8] *Id.* at 135.

[9] *Rollo*, pp. 7-8.

[10] CA *rollo*, p. 130.

Catholic youth recollection seminar in Baay, Licuan, Abra wherein he actively attended lectures and played basketball.[11] Jonathan, Jordan and Darwin, all with the surname of Crisologo, corroborated Ballacillo's attendance of the seminar.

On April 27, 1999, the participants of the recollection came to the parish church of Lagangilang for a youth encounter where Ballacillo played basketball. That night, they slept in one of the cottages in the compound. Jordan was sure that Ballacillo was always in their company and was never out of his sight the entire time.[12] They stayed the next day, April 28, 1999, when a *santacruzan* and a basketball tournament were held, until April 29, 1999 for the culminating activities and a Tingguian Program. It was only on April 30, 1999 that they returned home.

Ballacillo was adamant that it was his brother Sonny Boy who had carnal knowledge of the victim AAA, thereby impregnating her.[13] Sonny Boy stayed with them at AAA's house for three days in May 1999 and in July 1999, and visited again in September 1999. Sometime in July 1999, Ballacillo and AAA visited Sonny Boy. AAA stayed when Ballacillo left. Their father, Rodrigo Ballacillo, saw AAA and Sonny Boy asleep on one bed, and was happy together during AAA's stay.[14] After Ballacillo's arrest, Sonny Boy confessed to their father that he was the father of AAA's child.[15]

The RTC convicted Ballacillo of three counts of rape, but acquitted him in Criminal Case No. 2000-21 for utter lack of evidence. The decretal portion of the decision reads:

In view of the foregoing, judgment is hereby rendered:

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[11] *Rollo*, p. 8.

[12] CA *rollo*, p. 137.

[13] *Rollo*, p. 9.

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

[15] *Id.*

1. ACQUITTING the accused Gerald Ballacillo of the crime of Rape in Criminal [C]ase No. 2000-21 on the ground of utter lack of evidence;

2. CONVICTING the accused Gerald Ballacillo, GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code in Criminal Case No. 99-419 and pursuant to Article 63 of the Revised Penal Code hereby sentence the accused Gerald Ballacillo to suffer the penalty of reclusion perpetua, and to pay [₱]50,000.00 as civil indemnity and [₱]100,000.00 as moral damages.

3. CONVICTING the accused Gerald Ballacillo, GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code in Criminal Case No. 2000-22 and pursuant to Article 63 of the Revised Penal Code hereby sentence the accused Gerald Ballacillo to suffer the penalty of reclusion perpetua, and to pay [P]50,000.00 as civil indemnity and [₱]100,000.00 as moral damages.

4. CONVICTING the accused Gerald Ballacillo, GUILTY beyond reasonable doubt of simple rape, defined and penalized under Article 335 of the Revised Penal Code in Criminal Case No. 2000-23 and pursuant to Article 63 of the Revised Penal Code hereby sentence the accused Gerald Ballacillo to suffer the penalty of reclusion perpetua, and to pay [₱]50,000.00 as civil indemnity and [₱]100,000.00 as moral damages.

SO ORDERED.[16]

The RTC gave full faith and credence to AAA's testimony regarding the same as clear and straightforward with no adornments designed to elicit sympathy, as corroborated by the medical findings of the physician who examined her.[17]

In a Decision dated June 30, 2011, the CA denied the appeal filed by Ballacillo and affirmed with modification the decision

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[16] *Id.* at 155-156.

[17] *Id.* at 148.

of the RTC. The CA held that the prosecution positively established the elements of rape and upheld the credibility of AAA. The *fallo* of the decision provides:

> WHEREFORE, the appeal is DENIED. The Regional Trial Court Decision in Criminal [Cases No.] 99-419 and 2000-22 to 23 finding accused-appellant Gerald Ballacillo guilty of the crime charged is AFFIRMED with MODIFICATION. Gerald Ballacillo is ordered to pay private complainant, for each count of rape, civil indemnity in the amount of [₱]50,000.00, moral damages in the amount of [₱]50,000.00 and exemplary damages in the amount of [₱]30,000.00. No costs.
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> SO ORDERED.[18]

Hence, the instant appeal before this Court was instituted.

In its Manifestation and Motion in Lieu of Supplemental Brief[19] dated August 16, 2012, the Office of the Solicitor General (*OSG*) informed this Court that it opted not to file a supplemental brief considering that accused-appellant Ballacillo has not raised any new issue, and considered the case deemed submitted for decision.

Similarly, Ballacillo indicated that he no longer intends to file a supplemental brief and is adopting *in toto* all the arguments he raised in his Appellant's Brief which has extensively discussed and established his innocence.[20]

Basically, the issue to be resolved by this Court in this appeal is whether the prosecution was able to prove beyond reasonable doubt that Ballacillo is guilty of the crime of rape.

Finding no cogent reason to depart from the ruling of the lower courts, We sustain the conviction of the accused-appellant Ballacillo.

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[18] *Rollo*, p. 22. (Emphases omitted)

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

[20] *Id.* at 39-40.

Before all else, it is noted that the four Informations filed against the accused charged him with the crime of rape under Act No. 3815, or the Revised Penal Code (*RPC*). Consequently, the RTC convicted and sentenced, as affirmed by the CA, Ballacillo for rape under Article 335 of the RPC. However, Republic Act (*R.A.*) No. 8353, otherwise known as the Anti-Rape Law of 1997, became effective on October 22, 1997. The law reclassified rape as a crime against persons, thus, repealing Article 335 of the RPC. The new provisions on the crime of rape are now found in Articles 266-A to 266-D of the RPC. As established, the crime of rape was committed on April 14, 27, and 29, 1999. Thus, R.A. No. 8353, amending provisions of the RPC, is the law applicable in the instant case. The RTC and the CA erred in specifying violation of Article 335 of the RPC in convicting the accused of three counts of rape. Nevertheless, as we have recently ruled in the case of *People v. Victor P. Padit*,[21] the failure to designate the offense by the statute or to mention the specific provision penalizing the act, or an erroneous specification of the law violated, does not vitiate the information if the facts alleged therein clearly recite the facts constituting the crime charged.[22] Neither by the caption or preamble of the information nor by the specification of the provision of the law alleged to have been violated determines the character of the crime but by the recital of the ultimate facts and circumstances in the complaint or information.[23] In this case, the acts alleged to have been committed by the accused are averred in the Informations, and the same describe acts punishable under Article 266-A, in relation to 266-B of the RPC, as amended.

The pertinent provisions of Articles 266-A and 266-B of the Revised Penal Code, as amended, provide:

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[21] G.R. No. 202978, February 1, 2016.

[22] *People v. Victor P. Padit, supra.*

[23] *Id.*

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

ART. 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The RTC and the CA found that the prosecution successfully proved beyond reasonable doubt all the elements of the crime of rape and accused-appellant's guilt.

In an attempt to destroy AAA's credibility, the accused-appellant harps on the alleged significant inconsistencies in her testimonies about the place and manner of the rape. Ballacillo avers that the testimony of AAA's mother engendered reasonable doubt on his guilt since it was unlikely that she would not exert a little effort to ascertain what was happening upon noticing the movement of the wall near where her daughter was sleeping. He insists that his brother Sonny Boy was the father of AAA's child.

In almost all cases of sexual abuse, the credibility of the victim's testimony is crucial because more often than not, only the persons involved can testify as to its occurrence.[24] Unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the

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[24] *People v. Rudy Nuyok*, G.R. No. 195424, June 15, 2015.

trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.[25]

Time and again, this Court held that testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her.[26] Youth and immaturity are generally badges of truth. What is merely required in establishing rape through testimonial evidence is that the victim be categorical, straightforward, spontaneous and frank in her statements about the incident of rape.[27]

In the case at bar, we agree with the RTC and the CA that the testimony of AAA was straightforward, categorical, and consistent on all material points, thus, sufficient to establish the carnal knowledge as an element of the crime of rape. As place of the commission of the crime is not an element of rape, the alleged inconsistency in the place of rape does not affect the integrity of the evidence of the prosecution and AAA's credibility.

Furthermore, it was ruled that there is sufficient basis to conclude that there has been carnal knowledge when the testimony of a rape victim is consistent with the medical findings.[28] The medical findings by Dr. Banez that AAA was indeed six months pregnant at the time of examination and that her last menstrual period was in April 1999 corroborates AAA's averment that the alleged incidents of rape happened in the same month. It can be concluded from the said findings that

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[25] *People v. Reman Sariego*, G.R. No. 203322, February 24, 2016.

[26] *People v. Joel "Andoy" Buca*, G.R. No. 209587, September 23, 2015.

[27] *People v. Gecomo*, 324 Phil. 297 (1996).

[28] *People v. Enrique Galvez*, G.R. No. 212929, July 29, 2015.

there has been carnal knowledge during that period, thus, corroborating AAA's averments of the sexual abuse she suffered in the hands of the accused. The same also negates Ballacillo's attempt to shift the blame to his brother whom he claims had a romantic episode with AAA during the months of May, July and September 1999.

Maintaining that there is no rape, Ballacillo posits that the impossibility of lack of eyewitness and non-detection by AAA's family is apparent given that her bed squeaks and her siblings were asleep nearby.

This Court finds the same untenable. It has been shown repeatedly by experience that many instances of rape were committed not in seclusion but in very public circumstances.[29] Thus, rape can be committed despite the presence of others in the dwelling for seclusion is not an element of the crime.[30] As privacy is not a hallmark of the crime of rape, the presence of others in the same house did not easily deter the accused-appellant from imposing himself on the victim. Based on AAA's narration of the manner and the time the accused committed the crimes, it can be surmised that he made sure that the likelihood that the others discovering him in raping the victim would be minimal. In one instance, he even concealed the same by nonchalantly responding to AAA's mother's query that he urinated when she noticed the movement of the walls near AAA. He covered her mouth coupled with a threat in her and her father's lives, while in another there was a threat with a knife.

The accused faulted AAA's deportment before, during, and after the incidents of the rape, claiming that such is inconsistent with the natural reaction and behavior of a woman whose person had been violated. At the very least, she should have shouted or employed significant resistance from assault.

We are not persuaded. During the three incidents of rape, AAA was forced to submit to Ballacillo's lewdness out of fear

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[29] *People v. Rudy Nuyok, supra* note 24.

[30] *Id.*

for her life and that of her family. It was held that a youthful victim of serial rapes like AAA could not be expected to think and to act like a composed adult victim.[31] There is no standard of behavior for all rape victims in the aftermath of their defilement, for people react differently to emotional stress for some may exhibit signs of stress, while others may act nonchalantly.[32] Tenacious resistance against rape is not required; neither is a determined or a persistent physical struggle on the part of the victim necessary.[33] Moreover, failure to cry for help or attempt to escape during the rape is not fatal to the charge of rape; it does not make voluntary the victim's submission to appellant's lust.[34] Rape through intimidation includes the moral kind such as the fear caused by threatening the girl with a knife or pistol.[35] In this case, Ballacillo's knife and continual threats were enough to make AAA cower in fear and submit to his lust. The RTC and the CA did not err in finding that the accused employed enough force and intimidation to consummate his purpose. The fact that AAA was able to ride the tricycle with the accused and resumed her normal routines is trivial and does not affect the positive and categorical testimony of AAA about the rape.

Accused-appellant averred that AAA's silence for several months, coupled with the fact that she divulged about the rape when people started noticing her condition, throws suspicion to her real motive. Ballacillo insinuates that the charges were made to shift the blame to him or that her parents compelled her to concoct such accusation in attempt to dispel any stigma which may be bestowed to AAA due to an unexpected pregnancy at a young age.

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[31] *Id.*

[32] *Id.*

[33] *People v. Ramos*, G.R. No. 200077, September 17, 2014, 735 SCRA 466, 486.

[34] *Id.* at 487.

[35] *Id.*

This Court disagrees. Delay in reporting a rape to the police authorities does not negate its occurrence nor does it affect the credibility of the victim.[36] In the face of constant threats of violence and death, not just on the victim but extending to her kin, a victim may be excused for tarrying in reporting her ravishment.[37] In the case at bar, AAA was constantly threatened by the accused. The fear instilled by such threats was magnified since AAA lived in the same house with Ballacillo who is her uncle, being her father's first cousin. AAA feared the reaction of her father, having a nasty temper, if he would discover her harrowing ordeal. We agree with the RTC that AAA's reasoning is straightforward, practical thinking and logical for a minor who fears loss of support for the family if her father is imprisoned. From the foregoing, the delay in reporting the rape is justified.

Ballacillo alleges that the defense of alibi or denial assumes significance or strength when it is amply corroborated by a credible witness. Since his testimony was corroborated by credible witnesses, the RTC erred in convicting him of the crime.

Such contention fails scrutiny. The RTC dismissed Ballacillo's defense of alibi even with corroboration by the testimonies of Jonathan, Jordan, Darwin, and Rodrigo. It was telling that the defense was unable to present a certificate of attendance of the youth recollection seminar conducted by fraters[38] to support Ballacillo's claim of religious attendance. The RTC was suspicious of Jordan's over-eagerness and zeal in testifying for the accused especially in light of the revelation that Jordan signed the affidavit that was already prepared at the urge of the barangay captain.

The inherent impossibility of committing the crime was belied by the fact that during the date and time of the incidents, Ballacillo was either a kilometer away or about five kilometers away. It

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[36] *Id.* at 489.

[37] *Id.*

[38] As defined in the CA Decision: A seminarian who is either in a majority seminary (collegiate level) or theology (post-graduate).

was settled that while the said recollection was originally held in Baay, Abra which was about a three-hour ride away from Lagangilang, the participants, however, went to a parish in Lagangilang located about five kilometers from AAA's residence on April 27 to April 30, 1999. Also, Jordan admitted that they were in Holy Cross Compound, about a kilometer away from Laang, on April 14, 1999. In the clarifying questions by the trial court, Jordan testified in this manner:

Q: On April 14, at 3:30 o'clock in the afternoon where were you?
A: I was then in Lagangilang, sir.

Q: And so with the accused, is it not?
A: Yes, sir.

Q: Where was he at [that] time?
A: He was at the compound, sir.

Q: Holy Cross Compound is quite near to Barangay Tagodtod, Lagangilang, Abra, is it not?
A: It's quite a distance, sir.

Q: Can you approximate the distance? How many kilometers?
A: More or less five (5) kilometers.

Q: What about the distance between Holy Cross and Laang?
A: Maybe it is only one [kilometer], sir.

Q: Can you honestly tell this Honorable Court that there was never an instant or a gap of maybe one (1) hour or two (2) that you did not see the accused Gerald Ballacillo from April 8, 1999 to April 29, 1999?
A: None, sir.

Q: And you are positive that even when you were sleeping the accused was in the compound?
A: Yes, sir.

Q: And you are also very sure that even when you were in the toilet the accused was in the compound?
A: Yes, sir.

Q: And you are also very sure that even when you were in the shower the accused was also in the compound?
A: Yes, sir.

Q: And even when you were eating[,] the accused was also in the compound?
A: Yes, sir.

Q: And you are very sure that even while you were sleeping you know that the accused was near you?
A: Yes, sir.[39]

It is settled in jurisprudence that minority as a qualifying circumstance must be proven with equal certainty and clearness as the crime itself such that there must be independent evidence proving the age of the victim, other than testimonies of the witnesses and the lack of denial by the accused.[40] Since there was no independent proof of AAA's age aside from her testimony, the RTC is correct in convicting the accused of three counts of simple rape.

Anent the issue on the awards granted, pursuant to the recent rulings in the case of *People v. Ireneo Jugueta*,[41] we increase the awards for each count of rape for the civil indemnity, moral damages, and exemplary damages to ₱75,000, each, plus interest at the rate of six percent (6%) *per annum* from date of finality of the Decision until fully paid.

WHEREFORE, the instant appeal is **DISMISSED** and the Decision dated June 30, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 03648 finding appellant Gerald Ballacillo guilty beyond reasonable doubt of three (3) counts of Rape as defined in and penalized under Article 266-A, in relation to Article 266-B, of the Revised Penal Code, as amended, and sentencing him to suffer the penalty of *reclusion perpetua* with all the accessory penalties for each count is hereby **AFFIRMED** with the following **MODIFICATIONS**: (1) Appellant is **ORDERED** to **PAY** AAA the amount of ₱75,000.00 as civil

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[39] CA *rollo*, pp. 138-139, citing TSN (Gabriel), April 17, 2002, pp. 17-22.

[40] *People v. Alvarado*, 429 Phil. 208, 224 (2002), as cited in *People v. Ortega*, 680 Phil. 285, 303 (2012).

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

indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages, for each count; and (2) to **PAY** interest at the rate of six percent (6%) *per annum* from date of finality of the Decision until fully paid.

SO ORDERED.

Carpio,[*] *Velasco, Jr.* (*Chairperson*), *Perez*, and *Reyes, JJ.*, concur.

SECOND DIVISION

[G.R. No. 206936. August 3, 2016]

PICOP RESOURCES, INC., *petitioner, vs.* **SOCIAL SECURITY COMMISSION and MATEO A. BELIZAR,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; SOCIAL SECURITY CONDONATION LAW OF 2009 (RA 9903) AND IMPLEMENTING RULES ON DELINQUENT REMITTANCE OF SOCIAL SECURITY SYSTEM (SSS) CONTRIBUTIONS; TO BE COVERED BY THE CONDONATION PROGRAM, THE EMPLOYER MUST, WITHIN THE PERIOD OF THE PROGRAM, REMIT

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 24, 2014.

THE FULL AMOUNT OF THE DELINQUENT CONTRIBUTIONS OR SUBMIT A PROPOSAL TO PAY THE DELINQUENT CONTRIBUTIONS IN INSTALLMENT.— RA 9903 is the Social Security Condonation Law of 2009. x x x SSS Circular No. 2010-004, Series of 2010, which provides for the implementing rules and regulations of RA 9903, states that "[a]ny employer who is delinquent or has not remitted **all** contributions due and payable to the SSS may avail of" the condonation program under the law. In order to be covered by the program, the employer must a) **"[r]emit within the period of the Program the full amount of the delinquent contributions** through any SSS Branch with tellering facility or authorized collection agents of the SSS e.g., banks, payment centers," or b) "[**s]ubmit a proposal x x x within the period of the Program to pay the delinquent contributions in installment to the SSS Branch** having jurisdiction over its place of business or household address." It would appear from the February 28, 2013 Certification issued by the SSS Bislig City Branch that petitioner failed to pay the full amount of its delinquent contributions; nor did it submit a proposal to pay the same in installments. Therefore, petitioner has not placed itself under the coverage of RA 9903. "The clear intent of the law is to grant condonation only to employers with delinquent contributions or pending cases for their delinquencies and who pay their delinquencies within the six (6)-month period set by the law." It was never the intention of RA 9903 to give the employer the option of remitting and settling only some of its delinquencies, and not all; of paying the lowest outstanding delinquencies and ignoring the most burdensome; of choosing the course of action most beneficial to it, while leaving its employees and government to enjoy the least desirable outcome. If this were so, then the purpose of the law would be defeated.

APPEARANCES OF COUNSEL

Dennis P. Ancheta for petitioner.

Eduardo S. Gamboa for respondent Belizar.

Social Security Commission Legal Department for respondent SSC.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 31, 2012 Decision[2] of the Court of Appeals (CA) dismissing the Petition for Review[3] in CA-G.R. SP No. 110724, and the CA's April 24, 2013 Resolution[4] denying petitioner's Motion for Reconsideration[5] of the herein assailed Decision.

Factual Antecedents

On October 28, 2004, herein respondent Mateo A. Belizar (Belizar) filed SSC Case No. 11-15788-04 before the Social Security Commission (SSC), his co-respondent in this Petition, to establish his actual period of employment with herein petitioner PICOP Resources, Inc.[6] and compel the latter to remit unpaid Social Security System (SSS) premium contributions, in order that he may collect his SSS retirement benefits.[7]

The SSS intervened in the case, and, after proceedings in due course were taken, the SSC issued its February 4, 2009 Resolution[8] containing the following pronouncement:

> Upon due consideration of all the evidence on record, this Commission is thoroughly convinced that the petitioner was continuously employed as a preventive maintenance mechanic by

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[1] *Rollo*, pp. 3-25.

[2] *Id*. at 27-43; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser.

[3] *Id*. at 70-85.

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

[5] *Id*. at 173-181.

[6] A domestic corporation originally known as Bislig Bay Lumber, Inc., and later, Paper Industries Corporation of the Philippines or PICOP.

[7] *Rollo*, pp. 47-49; Petition in SSC Case No. 11-15788-04.

[8] *Id*. at 50-55; penned by Commissioner Fe Tibayan Palileo.

respondent Bislig Bay Lumber Co., Inc./PICOP from 1966 to 1978. This finding is moored primarily on the positive and straightforward testimonies of the petitioner's witnesses, namely: Ramon A. Osaraga, and his brother, Anastacio Belizar, who, being co-employees of the petitioner within the same department of the respondent company, testified on the basis of their personal knowledge that the petitioner was, indeed, continuously employed by the respondent company during the said period. The sworn declarations of Felix V. Romero in the Joint Affidavit dated August 23, 2002 and that of Manuel M. Mijares in his Affidavit dated December 1, 2005, moreover, gave added evidentiary weight in establishing the petitioner's actual period of employment.

Based on the admission of the respondent in its Answer, the petitioner appears in its records to have been first employed in November 1966. Culled also from the certificate of employment dated September 14, 1977 issued by the respondent, the petitioner was paid a daily rate of ₱7.00 from November 3, 1966 until June 15, 1968. While there is testimonial evidence to prove that the petitioner worked with the respondent until 1978, it cannot be determined exactly when his employment ceased in that year, as well as the amount of his monthly compensation from July 1968 onwards. Hence, this Commission deems it appropriate to hold that the petitioner worked with the respondent from November 1966 until December 1978 and was paid the legal minimum wage then prevailing.

Despite the petitioner's claim that he was employed by the respondent starting 1965, there is no sufficient evidence to warrant such a finding as both the testimonial and documentary evidence on record preponderates as to show that he was first employed by the respondent only in November 1966, which, incidentally, is also the date he was reported to the SSS for coverage by the respondent. It was only the petitioner's brother, Anastacio Belizar, who claimed that the former was already working at PICOP when he was first hired in the last quarter of 1965. The rest of the petitioner's witnesses have no personal knowledge if he, indeed, worked with the respondent in 1965.

The respondent's bare contention that the petitioner was merely employed as a "casual Mechanic Helper" and/or "Casual Mechanic I", whose employment contract was periodically renewed, is belied by the overwhelming evidence as to the actual nature and duration of his employment in the respondent which it failed to refute.

It is paramount to clarify that not all casual employment are exempt from SS coverage. Section 8 (j) 3 of R.A. No. 1161, as amended, only exempts from SS coverage employment which is purely casual in nature and not for the purpose of the occupation or business of the employer. It is also settled that the determination of whether employment is casual or regular does not depend on the will or word of the employer, and the procedure of hiring but the nature of the activities performed by the employee, and to some extent, the length of performance and its continued existence x x x. And the primary standard of determining regular employment is the reasonable connection between the particular activities performed by the employee in relation to the usual trade or business of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. x x x.

Thus, in the petitioner's case, his work as a Preventive Maintenance Mechanic from 1966 to 1978 at the mechanical and electrical section and/or light and heavy equipment department of the respondent company, which to date is engaged in the industry of paper production on a mammoth scale, is both necessary and desirable in the latter's usual trade or business. Despite the designation by the respondent of the petitioner's position in the certifications of employment that it issued as a mere "casual Mechanic Helper" and/or Casual Mechanic I, the repeated and continuous need for his services constitutes evidence of the necessity and indispensability of his services to the respondent and on the basis of the aforementioned legal authorities, his employment is regarded as regular.

Considering that the respondent only remitted 22 monthly SS contributions for and in behalf of the petitioner despite his continuous employment from November 1966 to December 1978, the respondent is liable to pay the unremitted SS contributions corresponding to the said period, as well as the 3% per month penalty imposed thereon for late payment until fully paid, pursuant to Section 22(a) of R.A. No. 8282 or the Social Security Act of 1997. Moreover, since the petitioner has reached the retirement age of sixty (60) on October 9, 2001, it appearing in his SSS records that he was born on October 9, 1941, the respondent is also liable to pay damages pursuant to Section 24(b) of the same law for failure to remit any contribution due prior to the date of contingency resulting into the reduction of benefits equivalent to the difference between the amount of benefit to which the employee member or his beneficiary is entitled to receive

had the proper contributions been remitted to the SSS and the amount payable on the basis of the contributions actually remitted.

WHEREFORE, PREMISES CONSIDERED, the Commission finds, and so holds, that respondent PICOP RESOURCES, INC. is liable to pay the SSS, within thirty (30) days from receipt hereof, the unremitted SS contributions corresponding to the petitioner's employment from November 1966 to December 1978 in the amount of One Thousand Three Hundred Seventy-Three Pesos and 10/100 (₱1,373.10), the 3% per month penalty imposed thereon for late payment in the amount of Seventeen Thousand Sixty-Eight Pesos and 99/100 (₱17,068.99), computed as of January 10, 2009, and damages in the amount of Seventy-Two Thousand Pesos (₱72,000) for failure to remit all the contributions due the petitioner prior to his reaching the retirement age of sixty (60) on October 9, 2001, pursuant to Section 24(b) of the Social Security Act of 1997.

This is without prejudice to the right of the SSS to collect the additional 3% per month penalties that accrued after January 10, 2009 until fully paid.

Corollary herewith, the SSS is directed to immediately process and pay the petitioner's retirement benefit upon filing of the appropriate claim, it appearing from its records that he was born on October 9, 1941 and has already reached the retirement age of sixty (60) on October 9, 2001, subject to its existing rules and regulations, and to inform this Commission of its compliance herewith.

SO ORDERED.[9]

Petitioner filed a Motion for Reconsideration,[10] which the SSC denied in an Order[11] dated July 15, 2009. It held:

It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent evidence to prove the relationship may be admitted. For if only documentary evidence would be required to show the relationship, no scheming employer would ever be brought to the bar of justice,

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[9] *Id*. at 53-55.

[10] *Id*. at 56-67.

[11] *Id*. at 68-69; penned by Commissioner Fe Tibayan Palileo.

as no employer would wish to come out with any trace of illegality he has authored considering that it should take much weightier proof to invalidate a written instrument x x x.

Thus, the existence of a documentary evidence tending to prove a person's employment for a limited period, such as in this case the adverted certifications of employment issued by the respondent's Human Resource Management, does not preclude the admission of other evidence, documentary or testimonial, to prove his actual period of employment, which may be longer than what has been certified by his employer. The question of whether an employer-employee relationship exists is a question of fact and any competent evidence to prove the relationship may be admitted. Thus, in the petitioner's case, his positive and forthright testimony, as well as that of his witnesses, are considered competent proofs of his actual period of employment which may be admitted in addition to all the other evidence on record, testimonial or documentary.[12]

Ruling of the Court of Appeals

In a Petition for Review[13] filed with the CA and docketed as CA-G.R. SP No. 110724, petitioner sought reversal of the above SSC dispositions, arguing that the latter committed grave abuse of discretion in declaring that Belizar was employed by it until 1978, and in giving more weight to Belizar's testimonial evidence instead of its documentary evidence.

Meanwhile, it appears that on April 26, 2010, petitioner remitted to the SSS Davao City Branch Office the amount of ₱1,373.10, or the total adjudged unremitted/delinquent SSS contributions corresponding to Belizar's employment from November 1966 to December 1978. This was supposedly done in availment of Republic Act No. 9903 (RA 9903), or the Social Security Condonation Law of 2009. For this, the SSS Bislig City Branch issued a Certification[14] dated February 28, 2013, which states as follows:

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[12] *Id*.

[13] *Id*. at 151-172.

[14] *Id*. at 185.

This is to certify that Picop Resources, Inc. (PRI) with SSS ER No. 09-1512165-0 had not filed an Application for Condonation of Penalty Program under R.A. No. 9903 or Social Security Condonation Law of 2009 in connection with SSC Case No. 11-15788-04 entitled 'Mateo Belizar vs. PRI.'

This is to certify further that PRI had paid Php1,373.10 on May 24, 2010 for the principal amount of its premium delinquency covering the period from January 1967 to December 1978 in favor of Mateo Belizar in compliance with the resolution of the Social Security Commission in SSC Case No. 11-15788-04. The penalties and damages, however, remain unpaid up to present.

Had the PRI applied for condonation of penalties under R.A. No. 9903 involving only one employee, Mateo Belizar, the same would be denied considering that the availment of the condonation of penalty program under R.A. 9903 should be for all employees of the delinquent employer.[15]

On October 31, 2012, the CA issued the assailed Decision in CA-G.R. SP No. 110724, which contains the following pronouncement:

THE PETITION LACKS MERIT.

x x x x x x x x x

The respondent SSC, in determining the coverable period of employment of x x x Belizar was clearly within its jurisdiction. Its finding that the private respondent was continuously employed as a preventive maintenance mechanic by Bislig Bay Lumber Co., Inc./ PICOP from 1966 to 1978 was duly supported by substantial evidence as found in the records of the case. It was anchored not only on the credible testimonies of respondent Mateo's witnesses but also on the material admissions of the petitioner on record. The SSC, in its assailed resolution ratiocinated in this wise:

> *'This finding is moored on the positive and straightforward testimonies of the petitioner's witnesses, namely: Ramon A. Osaraga, and his brother Anastacio Belizar, who, being co-employees of the petitioner within the same department of the*

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[15] *Id*.

respondent company, testified on the basis of their personal knowledge that the petitioner was, indeed, continuously employed by the respondent company during the said period. The sworn declarations of Felix V. Romero in the Joint Affidavit dated August 23, 2002 and that of Manuel M. Mijares in his Affidavit dated December 1, 2005, moreover, gave added evidentiary weight in establishing the petitioner's actual period of employment.

Based on the admission of the respondent in its Answer, the petitioner appears in its records to have been first employed in November 1966. Culled also from the certificate of employment dated September 14, 1977 issued by the respondent, the petitioner was paid a daily rate of ₱7.00 from November 3, 1966 until June 15, 1968. While there is testimonial evidence to prove that the petitioner worked with the respondent until 1978, it cannot be determined exactly when his employment ceased in that year, as well as the amount of his monthly compensation from July 1968 onwards. Hence, this Commission deems it appropriate to hold that the petitioner worked with the respondent from November 1966 until December 1978 and was paid the legal minimum wage then prevailing.'

The public respondent SSS also argued that PICOP's assertion that its evidence deserve [sic] more probative value would entail the application of the rule on preponderance of evidence.

The findings of facts of quasi-judicial agencies, which have acquired expertise in the specific matters entrusted to their jurisdiction, are accorded by this Court not only respect but even finality if they are supported by substantial evidence. Only substantial, not preponderance, of evidence is necessary. Section 5, Rule 133 of the Rules of Court, provides that in cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

A preponderance of evidence is defined as 'evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is evidence which as a whole shows that the fact sought to be proved is more probable than not.'

x x x x x x x x x

Errors of judgment are not necessarily a ground for reversal. When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error was committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. In such a situation, the administration of justice would not survive.

In its assailed order, the SSC pronounced:

> *'It is settled that no particular form of evidence is required to prove the existence of an employer-employee relationship. Any competent evidence to prove the relationship may be admitted. For if only documentary evidence would be required to show the relationship, no scheming employer would ever be brought to the bar of justice, as no employer would wish to come out with any trace of illegality he has authored considering that it should take much weightier proof to invalidate a written instrument (Opulencia Ice Plant and Storage vs. NLRC, 228 SCRA 473).*
>
> *Thus, the existence of a documentary evidence tending to prove a person's employment for a limited period, such as in this case the a[d]verted certifications of employment issued by the respondent's Human Resource Management, does not preclude the admission of other evidence, documentary or testimonial, to prove his actual period of employment, which may be longer than what has been certified by his employer. The question of whether an employer-employee relationship exists is a question of fact and any competent evidence to prove the relationship may be admitted. Thus, in the petitioner's case, his positive and forthright testimony, as well as that of his witnesses, are considered competent proofs of his actual period of employment which may be admitted in addition to all the other evidence on record, testimonial or documentary.'*

There is no reason for this Court to disturb the factual findings of the public respondent SSC. It is axiomatic that factual findings of administrative agencies which have acquired expertise in their field are binding and conclusive on the court, for as long as substantial evidence supports said factual findings.

The general rule is that where the findings of the administrative body are amply supported by substantial evidence, such findings

are accorded not only respect but also finality, and are binding on this Court. Hence, this Court finds the public respondent SSC to have acted well within its province and thus, no reversible error was committed.

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.[16] (Italics in the original)

Petitioner filed a Motion for Reconsideration, arguing among others that all its adjudged liabilities were condoned when it availed of the provisions of RA 9903 on April 26, 2010 by paying the total adjudged unremitted/delinquent SSS contributions corresponding to Belizar's employment from November 1966 to December 1978. However, in an April 24, 2013 Resolution, the CA remained unconvinced.

Hence, the present Petition.

In an August 4, 2014 Resolution,[17] this Court resolved to give due course to the Petition.

Issue

Petitioner submits that –

THE RESPONDENT COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF ITS JURISDICTION WHEN IT EVADED AND FAILED TO RULE ON THE MAIN ISSUE IN THE MOTION FOR RECONSIDERATION, TO WIT:

> WHETHER X X X THE AVAILMENT BY PETITIONER OF THE PROVISIONS OF R.A. NO. 9903 HAD THE LEGAL EFFECT OF CONDONING THE PENALTIES, INTERESTS AND DAMAGES IMPOSED BY THE FEBRUARY 4, 2009 DECISION OF THE RESPONDENT SOCIAL SECURITY COMMISSION.[18]

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[16] *Id*. at 35-42.

[17] *Id*. at 239-240.

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

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that all its adjudged liabilities under the SSC's February 4, 2009 Resolution be considered condoned, petitioner maintains in the Petition and Reply[19] that with its availment of the condonation program under RA 9903 and payment of delinquent and unpaid SSS contributions relative to Belizar's account within the period allowed by the law and applicable circulars, its other adjudged liabilities for penalties and damages should be eliminated and condoned as well; that since it is now undergoing rehabilitation, RA 9903 should be applied liberally in its case to allow it to fully recover; and that SSS's opposition, intervention, and chosen courses of action in the case are inconsistent with the concept of condonation mandated by RA 9903.

Respondent's Arguments

In its Comment[20] praying for dismissal and corresponding affirmance of the assailed dispositions, the SSC argues that petitioner should have availed of the remedy of *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure (1997 Rules); that the CA did not commit grave abuse of discretion; that the issue of condonation may not be raised, as it was not one of the issues submitted for resolution in the Petition for Review before the CA; that petitioner did not actually formally and properly avail of the condonation program under RA 9903, which fact is shown by the February 28, 2013 SSS Certification submitted by petitioner itself; and that if any, condonation under RA 9903 does not extend to the damages adjudged in SSC Case No. 11-15788-04.

Our Ruling

The Petition is denied.

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[19] *Id*. at 216-224.

[20] *Id*. at 196-201.

The main issue to be resolved is: can petitioner avail of the provisions of RA 9903?

The answer is in the negative.

RA 9903, or the Social Security Condonation Law of 2009, provides:

> Section 2. Condonation of Penalty. – Any employer who is delinquent or has not remitted all contributions due and payable to the Social Security System (SSS), including those with pending cases either before the Social Security Commission, courts or Office of the Prosecutor involving collection of contributions and/or penalties, may within six (6) months from the effectivity of this Act:
>
> (a) remit said contributions; or
>
> (b) submit a proposal to pay the same in installments, subject to the implementing rules and regulations which the Social Security Commission may prescribe: Provided, That the delinquent employer submits the corresponding collection lists together with the remittance or proposal to pay installments: Provided, further, That upon approval and payment in full or in installments of contributions due and payable to the SSS, all such pending cases filed against the employer shall be withdrawn without prejudice to the refiling of the case in the event the employer fails to remit in full the required delinquent contributions or defaults in the payment of any installment under the approved proposal.

In order to avail of the benefits under the said law, the employer must pay "**all** contributions due and payable" to the SSS, and not merely a portion thereof. In petitioner's case, it paid only the delinquent contributions corresponding to Belizar's account. The February 28, 2013 Certification issued by the SSS Bislig City Branch bears this out:

> This is to certify that Picop Resources, Inc. (PRI) with SSS ER No. 09-1512165-0 had not filed an Application for Condonation of Penalty Program under R.A. No. 9903 or Social Security Condonation Law of 2009 in connection with SSC Case No. 11-15788-04 entitled 'Mateo Belizar vs. PRI.'

This is to certify further that PRI had **paid Php1,373.10 on May 24, 2010 for the principal amount of its premium delinquency covering the period from January 1967 to December 1978 in favor of Mateo Belizar** in compliance with the resolution of the Social Security Commission in SSC Case No. 11-15788-04. The penalties and damages, however, remain unpaid up to present.

Had the PRI applied for condonation of penalties under R.A. No. 9903 involving only one employee, Mateo Belizar, the same would be denied considering that the availment of the condonation of penalty program under R.A. 9903 should be for all employees of the delinquent employer.[21] (Emphasis and underscoring supplied)

SSS Circular No. 2010-004, Series of 2010, which provides for the implementing rules and regulations of RA 9903, states that "[a]ny employer who is delinquent or has not remitted **all** contributions due and payable to the SSS may avail of" the condonation program under the law.[22] In order to be covered by the program, the employer must a) "**[r]emit within the period of the Program the full amount of the delinquent contributions** through any SSS Branch with tellering facility or authorized collection agents of the SSS e.g. banks, payment centers," or b) "**[s]ubmit a proposal x x x within the period of the Program to pay the delinquent contributions in installment to the SSS Branch** having jurisdiction over its place of business or household address."[23] It would appear from the February 28, 2013 Certification issued by the SSS Bislig City Branch that petitioner failed to pay the full amount of its delinquent contributions; nor did it submit a proposal to pay the same in installments. Therefore, petitioner has not placed itself under the coverage of RA 9903.

"The clear intent of the law is to grant condonation only to employers with delinquent contributions or pending cases for their delinquencies and who pay their delinquencies within the

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[21] *Id*. at 185.

[22] SSS Circular No. 2010-004, Section 2. Emphasis supplied.

[23] *Id*. Section 10. Emphasis supplied.

six (6)-month period set by the law."[24] It was never the intention of RA 9903 to give the employer the option of remitting and settling only some of its delinquencies, and not all; of paying the lowest outstanding delinquencies and ignoring the most burdensome; of choosing the course of action most beneficial to it, while leaving its employees and government to enjoy the least desirable outcome. If this were so, then the purpose of the law would be defeated.

To repeat, the clear implication of the February 28, 2013 SSS Certification is that petitioner did not settle its delinquencies in full. Well into the present proceedings, petitioner has failed to disprove such fact. For this reason, it cannot avail of the benefits under RA 9903. "Laws granting condonation constitute an act of benevolence on the government's part, similar to tax amnesty laws; their terms are strictly construed against the applicants."[25] If petitioner desires to be covered under RA 9903, it must show that it is qualified to avail of its provisions. This it failed to do, and for this reason, it may not escape payment of its adjudged liabilities under the SSC's February 4, 2009 Resolution.

Having gone into the very heart of the case and resolved the main issue that needed to be addressed, the Court finds no need to dwell on the other matters raised by the parties. The resolution thereof cannot alter the inevitable outcome; on the other hand, these issues have become unessential and irrelevant. Since this Court has declared that petitioner did not qualify for availment of the provisions of RA 9903, it must therefore answer for its adjudged liabilities as determined by the SSC in its February 4, 2009 Resolution.

WHEREFORE, the Petition is **DENIED**. The assailed October 31, 2012 Decision and April 24, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 110724 are **AFFIRMED**.

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[24] *Mendoza v. People*, 675 Phil. 759, 765-766 (2011).

[25] *Id.* at 767.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 209032. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **VIVENCIO AUSA,** *accused-appellant*.

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS; THE AGE OF THE VICTIM IS AN ESSENTIAL ELEMENT.—** Statutory rape under paragraph 1 (d) of Article 266-A of the RPC, as amended by R.A. No. 8353, is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act. Proof of force, intimidation, or consent is unnecessary as the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). However, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. The age of the victim is an essential element of statutory rape; thus, it must be proved by clear and convincing evidence.

2. **ID.; ID.; ID.; ID.; GUIDELINES IN DETERMINING THE AGE OF THE VICTIM.—** In *People v. Pruna,* the Court laid down the guidelines in determining the age of the victim: 1. The best evidence to prove the age of the offended party is an

original or certified true copy of the certificate of live birth of such party. 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age. 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances: a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old; b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old; c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old. 4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused. 5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him. 6. The trial court should always make a categorical finding as to the age of the victim.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD RAPE VICTIMS ARE GIVEN FULL WEIGHT AND CREDENCE, MORE SO WHEN CONSISTENT WITH THE MEDICAL FINDINGS.— The Court has ruled a number of times that testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape lest her claims are true. The child-victim's narration of how she was raped bears the earmarks of credibility, especially if no ill will — as in this case — motivates her to testify falsely against the accused. When a woman or a girl-child says that she has been raped,

she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity. The accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things. The medical report and the testimony of the examining physician, Dr. Baconawa, confirm the truthfulness of the charge. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.

4. **ID.; ID.; DENIAL AND ALIBI; FAIL AS AGAINST POSITIVE IDENTIFICATION OF THE ACCUSED.—** The Court rejects appellant's defenses of denial and alibi. Aside from being weak, these are self-serving evidence undeserving of weight in law if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant. Otherwise stated positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

5. **CRIMINAL LAW; SIMPLE RAPE; PENALTY.—** Article 266-B of the RPC, as amended by R.A. No. 8353, prescribes *reclusion perpetua* as the penalty for the crime of simple rape. The trial court, concurred by the appellate court, thus correctly imposed the penalty of *reclusion perpetua*. The Court, however, resolves to increase the amount of civil indemnity of ₱50,000.00 to ₱75,000.00, moral damages of ₱50,000.00 to ₱75,000.00 and exemplary damages of ₱30,000.00 to ₱75,000.00 pursuant to prevailing jurisprudence. The amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

APPEARANCES OF COUNSEL

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

RESOLUTION

PEREZ, *J.*:

For review is the appeal filed by appellant Vivencio Ausa from the 27 September 2012 Decision[1] of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00984 which affirmed with modification the Judgment[2] dated 3 September 2008, of the Regional Trial Court (RTC), Branch 2, Borongan City, Eastern Samar, in Criminal Case No. 11297, finding appellant guilty beyond reasonable doubt of the crime of Simple Rape.

In accordance with the ruling of this Court in *People v. Cabalquinto*,[3] the real name and identity of the rape victim, as well as the members of her immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother, BBB. AAA's personal circumstances as well as other information tending to establish her identity, and that of her immediate family or household members, are not disclosed in this decision.

Appellant was charged before the RTC with the crime of rape, to wit:

> That at about 7:30 in the evening of June 22, 2001 at Bgy. x x x, Llorente, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with force and violence and with lewd design, willfully, unlawfully and feloniously have carnal knowledge with [AAA], a 10 year old girl, against her will and consent, to the damage and prejudice of the victim.[4]

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[1] *Rollo*, pp. 3-15; Penned by Associate Justice Zenaida T. Galapate Laguilles with Associate Justices Edgardo L. De los Santos and Pamela Ann Abella Maxino concurring.

[2] Records, pp. 256-275; Presided by Judge Leandro C. Catalo.

[3] 533 Phil. 703 (2006).

[4] Records, p. 1.

On arraignment, appellant pleaded not guilty to the crime charged. AAA testified on the details of the crime in the trial that followed. AAA's mother, BBB, and the examining physician, Dr. Mario D. Baconawa (Dr. Baconawa), likewise testified.

The evidence shows that in the afternoon of 22 June 2001, AAA was in the town plaza watching a contest when a neighbor, appellant, dragged her to the back of a nearby school building. AAA screams and pleas for help were futile, drowned out by the program's loud music. Appellant removed AAA's underwear. AAA struggled to free herself but appellant overpowered her and forcibly inserted his male organ into AAA's. AAA cried and felt pain and discovered her female organ bleeding. After appellant freed her, AAA went home with her female genitalia still bleeding. She then related her ordeal to her mother who wasted no time in going to AAA's grandmother to ask for *mutya ng tubig* (healing water) for AAA to drink. The following day, BBB brought AAA to the police authorities to report the incident and to a doctor for physical examination.[5]

Municipal Health Officer Dr. Mario D. Baconawa (Dr. Baconawa) examined AAA on 23 June 2001 and he issued a Medical Certificate which states as follows:

-Fresh lacerations of the hymen at 12:00 o'clock, 3:00 o'clock, 6:00 o'clock, 7:00 o'clock & 9:00 o'clock positions

-Abrasion about .5 – 1 cm in diameter at the posterior commissure

-Circular abrasions around the labia minora

-Vaginal canal admits one finger without resistance and with blood oozing from the vaginal canal

-Vaginal smear for the presence of spermatozoa (no result available)

-No other pertinent physical examination finding[6]

Dr. Baconawa explained during trial that AAA's lacerations could have been caused by the insertion of a male organ and

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[5] TSN, 17 June 2002, pp. 2-9; TSN, 28 May 2002, pp. 4-9.

[6] Records, p. 6; The Medical Certificate was issued on 3 July 2001.

that such number of lacerations are attributable to the weakness of the hymen.[7]

Appellant interposed the defenses of denial and alibi. He claimed that he had been blind since he was a year old and needed assistance to go around since then, rendering it impossible for him to commit such a crime. He also maintained that he had been away at the time of the commission of the crime.[8] Appellant's mother corroborated appellant's claim of disability.[9] Appellant's nephew and a distant relative likewise testified to support appellant's assertion that he had been somewhere else at the time of the alleged rape.[10]

After trial, on 3 September 2008, appellant was found guilty beyond reasonable doubt of rape. The RTC disposed:

> WHEREFORE, in view of the foregoing, accused Vivencio Ausa @ "Beben" is hereby found **GUILTY** of the crime of simple **RAPE** and is sentenced to suffer the penalty of ***reclusion perpetua*** and is ordered to pay the private offended party the amounts of Fifty Thousand (Php50,000.00) pesos as civil indemnity and Fifty Thousand pesos (Php50,000.00) as moral damages.
>
> Accused having been under detention during the course of the trial is credited in the service of his sentence, with the full time that he have undergone preventive imprisonment, if he had voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise he shall be credited with four-fifths thereof.
>
> With costs.[11]

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[7] TSN, 27 May 2002, pp. 8-10.

[8] TSN, 7 May 2004, pp. 4-9.

[9] TSN, 23 February 2005, pp. 2-4.

[10] TSN, 14 May 2008, pp. 2-15; TSN, 10 July 2008, pp. 2-10.

[11] Records, pp. 274-275.

The Court of Appeals affirmed the RTC Decision and rendered the assailed decision affirming with modification the trial court's judgment, to wit:

WHEREFORE, the Decision September 3, 2008 of the Regional Trial Court ("RTC"), 8th Judicial Region, Branch 2, Borongan City, Eastern Samar, in Criminal Case No. 11297, finding appellant Vivencio Ausa guilty beyond reasonable doubt of the crime of simple rape is hereby **AFFIRMED with modifications.** Aside from moral damages and civil indemnity, appellant is **ORDERED** to pay the victim exemplary damages of Php30,000.00 and 6% interest *per annum* on all the civil damages from the date of the finality of this decision.[12]

Thus, the instant appeal.[13] In a Resolution[14] dated 11 November 2013, appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties dispensed with the filing of supplemental briefs.[15]

There is no merit in the appeal.

Articles 266-A and 266-B of the Revised Penal Code (RPC), as amended by Republic Act (R.A.) No. 8353,[16] define and punish rape as follows:

Article 266-A. *Rape; When and How committed.* – Rape is committed –

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

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

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[12] *Rollo*, p. 14.

[13] *Id*. at 16-17.

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

[15] *Id*. at 24-25 and 28-29.

[16] Effective 22 October 1997.

d. When the woman 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

Article 266-B. *Penalties*- Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua.*

x x x x x x x x x

Statutory rape under paragraph 1 (d) of Article 266-A of the RPC, as amended by R.A. No. 8353, is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act. Proof of force, intimidation, or consent is unnecessary as the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). However, the prosecution carries the burden of proving: (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[17] The age of the victim is an essential element of statutory rape; thus, it must be proved by clear and convincing evidence.[18]

In *People v. Pruna*,[19] the Court laid down the guidelines in determining the age of the victim:

1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.

2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.

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[17] *People v. Mingming*, 594 Phil. 170, 185-186 (2008).

[18] *People v. Ramos*, 577 Phil. 297, 304 (2008) citing *People v. Vargas*, 327 Phil. 387, 397 (1996).

[19] 439 Phil. 440, 470-471 (2002) as cited in *People v. Ramos*, *supra* note 18 at 304-305.

3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

   a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;

   b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;

   c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.

Herein, the age of AAA at the time of the commission of the crime was not sufficiently established. Other than bare testimonial evidence insufficient to meet the legal requirement, no other evidence was presented to prove AAA's age. Thus, appellant cannot be convicted of statutory rape but of simple rape under Article 266-A, paragraph 1 (a) of the RPC, as amended by R.A. No. 8353, the gravamen of which is carnal knowledge of a woman using force, violence, intimidation or threat alleged in the information.

AAA vividly described the rape committed against her on 22 June 2001. Her eloquent recollections during trial revealed a credible, candid, unequivocal and consistent narration of her ordeal, positively identifying it was suffered at appellant's hands. She testified as follows:

Q: AAA, do you know the accused in this case, Vivencio Ausa?
A: Yes, sir.

Q: Why do you know him?
A: Because he is my neighbor.

Q: If he is around, will you please point to Vivencio Ausa?

INTERPRETER TAVERA:

Witness pointing to a person seated at the front bench alone, and when asked his name, he answered, Vivencio Ausa.

x x x x x x x x x

Q: What did Vivencio Ausa do to you if any?
A : He dragged me to a place behind the school building.

x x x x x x x x x

Q: And while at the place behind the school building, what happened?
A: He pulled out my panty.

Q: While he was pulling out your panty, what were you doing then?
A: I was struggling to free myself, but he was stronger than me.

x x x x x x x x x

Q: After he succeeded in removing your panty what did he do with your panty? (sic)
A: He undressed himself, his pant, shirt and brief.

Q: After he undress himself with his pant and brief, what happened?
A: He raped me, sir.

Q: You said, you were raped, will you describe how did it happened (sic) that you were raped?
A: He inserted his private part to my private part also.

x x x x x x x x x

Q: And what did you feel when his penis was inserted into your vagina?
A: I felt the pain, sir.[20]

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[20] TSN, 17 June 2002, pp. 3-6.

The trial court, which had the better position to evaluate and appreciate testimonial evidence, found AAA's testimony to be more credible than that of the defense. This Court is convinced that the RTC and the Court of Appeals were correct in according full credence to her.

The Court has ruled a number of times that testimonies of child-victims of rape are to be given full weight and credence. Reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape lest her claims are true. The child-victim's narration of how she was raped bears the earmarks of credibility, especially if no ill will—as in this case—motivates her to testify falsely against the accused.[21] When a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.[22] The accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[23]

The medical report and the testimony of the examining physician, Dr. Baconawa, confirm the truthfulness of the charge. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[24]

The Court rejects appellant's defenses of denial and alibi. Aside from being weak, these are self-serving evidence

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[21] *People v. Salazar*, 648 Phil. 520, 531 (2010) citing *People v. Montes*, 461 Phil. 563, 578 (2003).

[22] *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[23] *People v. Pascua*, 462 Phil. 245, 252 (2003).

[24] *People v. Perez*, 595 Phil. 1232, 1258 (2008).

undeserving of weight in law if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant.[25] Otherwise stated positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[26] Notably, as found by both lower courts, appellant's testimony and that of his nephew are inconsistent and do not support each other's material contentions, raising fatal doubts whether appellant was indeed somewhere else other than the place of the commission of the crime. Moreover, said nephew and the other witness, a distant relative, disingenuously and incredulously remember the exact dates they allege to have been in Borongan, Samar with appellant but curiously not the other times they assert to have gone there as was customary.

The Court likewise disbelieves appellant's assertion that he was incapable of committing the crime charged due to his alleged handicap. The prosecution significantly disputes appellant's claim of complete blindness. It is also noteworthy that appellant had a common-law wife for seven (7) years.[27] In any event, the Court notes that the absence of the sense of sight in itself does not completely disable a person from performing sexual congress. In the absence of any allegation to the contrary, for all intents and purposes, he remains a sensual man in complete possession of faculties to gratify one's corporeal needs.

All told, the prosecution was able to establish appellant's guilt of the crime charged beyond reasonable doubt.

Article 266-B of the RPC, as amended by R.A. No. 8353, prescribes *reclusion perpetua* as the penalty for the crime of

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[25] See *People v. Tagana*, 468 Phil. 784, 807 (2004).

[26] *Id*. at 808.

[27] TSN, 7 May 2004, pp. 11-12; TSN, 23 February 2005, pp. 4-5; TSN, 14 May 2008, p. 7.

simple rape. The trial court, concurred by the appellate court, thus correctly imposed the penalty of *reclusion perpetua.* The Court, however, resolves to increase the amount of civil indemnity of ₱50,000.00 to ₱75,000.00, moral damages of ₱50,000.00 to ₱75,000.00 and exemplary damages of ₱30,000.00 to ₱75,000.00 pursuant to prevailing jurisprudence.[28] The amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[29]

WHEREFORE, premises considered, the Decision dated 27 September 2012 of the Court of Appeals in CA-G.R. CEB-CR-H.C. No. 00984, affirming the conviction of appellant Vivencio Ausa of rape in Criminal Case No. 11297 by the Regional Trial Court of Borongan City, Eastern Samar, Branch 2, is **AFFIRMED** with **MODIFICATIONS**. Appellant is ordered to pay the private offended party as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

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[28] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

[29] *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.

[*] Additional Member per Raffle dated 1 August 2016.

THIRD DIVISION

[G.R. No. 212930. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANGELO BUENAFE *y* BRIONES @ "ANGEL,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— [T]he elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.

2. ID.; ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES.— [T]here is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. The requisites of treachery are: (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) Deliberate or conscious adoption of such means, method, or manner of execution.

3. REMEDIAL LAW; EVIDENCE; MOTIVE IS NOT SYNONYMOUS WITH INTENT; ABSENCE OF ILL-MOTIVE DOES NOT ESTABLISH INNOCENCE FOR THE CRIME CHARGED.— Appellant denies the accusations on the ground that he has no ill-motive to kill his close friend Rommel. This alibi deserves scant consideration. As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder. In *People v. Ducabo*, this Court held that motive is irrelevant when the accused has been positively identified

by an eyewitness. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime. Evidently, appellant's intent to kill was established beyond reasonable doubt by the manner the crime was committed. This can be seen when he even brought two other men to accompany him in killing Rommel and chose to execute it late at night to ensure that no other people can witness the crime.

4. ID.; ID.; CREDIBILITY OF WITNESSES; NOT TAINTED BY DELAY IN IDENTIFYING THE CRIMINAL.— Witnessing a crime is an unusual experience that elicits different reactions from the witnesses, and for which no clear cut standard form of behavior can be drawn. In *People v. Clariño* this court held that death threats, fear of reprisal, and even a natural reluctance to be involved in a criminal case have been accepted as adequate explanations for the delay in reporting crimes. Moreover, the delay in the witness' disclosure of the identity of the culprit will not affect his credibility nor lessen the probative value of his testimony.

5. ID.; ID.; ID.; NOT AFFECTED BY RETRACTION OF PREVIOUS STATEMENT MADE OUTSIDE THE COURT.— Appellant maintains that Kenneth's retraction of his previous statement disavowing any knowledge regarding the incident should not be considered against him. This Court is not persuaded. What this Court disfavors are the retractions of testimonies which have been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses. In the case at bar, Kenneth's recanted statement was made before the police and not in open court. In fact, the retraction of Kenneth's previous statement was made during the initial investigation of the charges against the appellant, which is clearly before the case was filed in court.

6. ID.; ID.; ID.; POSITIVE IDENTIFICATION PREVAILS AS AGAINST NEGATIVE FINGERPRINT ANALYSIS AND PARAFFIN TESTS RESULTS.— The positive identification made by the prosecution witnesses bears more weight than the negative fingerprint analysis and paraffin tests results conducted

the day after the incident. In *People v. Cajumocan*, this Court ruled that paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. x x x Furthermore, negative findings in the fingerprint analysis do not at all times lead to a valid conclusion for there may be logical explanations for the absence of identifiable latent prints other than the appellant not being present at the scene of the crime. The absence of latent fingerprints does not immediately eliminate the possibility that the appellant could have been at the scene of the crime.

7. CRIMINAL LAW; REVISED PENAL CODE; MURDER; DAMAGES.— In line with recent jurisprudence, appellant shall pay the heirs of Rommel Alvarez, ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for the crime of Murder. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Judgment until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Tagle-Chua Cruz and *Aquino* for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

Before the Court is an appeal from the Decision[1] of the Court of Appeals (CA) dated 19 December 2013 in CA-G.R. No. CR-

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[1] *Rollo*, pp. 2-10; Penned by Associate Justice Socorro B. Inting with Associate Justices Jose C. Reyes, Jr. and Myra V. Garcia-Fernandez concurring.

HC 05415, affirming the Decision[2] of the Regional Trial Court (RTC), Branch 93, San Pedro, Laguna which found appellant Angelo Buenafe y Briones guilty of the crime of Murder, as defined in Article 248 of the Revised Penal Code (RPC).

Appellant was charged with Murder. The accusatory portion of the Information narrates:

> That on or about March 24, 2005, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named said accused, conspiring and confederating with two other John Doe's whose identities are yet to be established, with intent to kill and abuse of superior strength, attended with the aggravating qualifying circumstance of treachery, did then and there willfully, unlawfully, and feloniously attack, assault, and shot one ROMMEL ALVAREZ, with the use of a handgun of unknown caliber, thereby inflicting upon him gunshot wound on his abdomen causing his instantaneous death, to the damage and prejudice of his surviving heirs.[3]

On arraignment, appellant entered a plea of NOT GUILTY for both charges. Trial on the merits ensued thereafter.

The Facts

The antecedent facts culled from the Appellee's Brief[4] and the records of the case are summarized as follows:

On 24 March 2005, at around 10 o'clock in the evening, Kenneth dela Torre, (Kenneth) a 15 year old farmhand, went to Alpa Farm to apologize to his employer, Rommel Alvarez (Rommel), who scolded him that day.

However, upon reaching the farm, he saw appellant and two (2) unidentified men alight from a vehicle. Thereafter, while Rommel was unwarily texting inside the tent, the two men suddenly restrained his arms behind his back. Subsequently,

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[2] Records, pp. 501-509; Presided by Judge Francisco Dizon Paño.

[3] *Id*. at 1.

[4] CA *rollo*, pp. 124-146.

appellant approached Rommel and delivered several blows to his abdomen until he crumpled to the ground. After which, appellant walked towards a nearby hut while the two men dragged Rommel.[5]

Inside the hut, appellant shot the victim using a lead pipe ("*sumpak*").[6] After fixing something, appellant and the two other men hurriedly proceeded to the car. Kenneth, on the other hand, went to his friend's house and out of fear, decided to keep the information to himself.[7]

When Kenneth reported for work the next morning, he learned that Rommel was dead.[8] On the same day, Marissa Alvarez (Marissa), wife of Rommel, pointed a number of their farmhands as possible suspects to the police, one of which was Kenneth.[9]

Since appellant is a known family friend, the farmhands followed his instructions to clean the hut and burn the bloodied mattress.[10] Fortunately, Winifredo Vibas stopped the farmhands from complying with appellant's orders.[11] Meanwhile, Kenneth told the police that he had no knowledge about Rommel's death.[12] Later on, appellant was also invited by the police and underwent fingerprinting analysis and paraffin test on the same day.

On 22 April 2005, Marissa and several farmhands failed to give their statements when they went to the Criminal Investigation and Detection Group (CIDG) Canlubang office because the computers bogged down. Overwhelmed by conscience and pity,

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[5] TSN, 20 February 2007, pp. 7-11.

[6] TSN, 24 April 2007, p. 3.

[7] *Id*. at 4; TSN, 8 August 2007, p. 4.

[8] *Id*.

[9] TSN, 13 August 2008, pp.10-11.

[10] TSN, 24 April 2007, p. 6; TSN, 12 December 2007, pp. 7-10; TSN, 19 May 2008, pp. 6-7.

[11] TSN, 19, May 2008, p. 7.

[12] TSN, 8 August 2007, p. 5.

Kenneth revealed to Marissa what he saw that fateful evening on their way home. The case was filed before the trial court a few months thereafter.

Appellant vehemently denied the accusations.[13] According to him, he cannot kill Rommel as he never had any ill-motive or grudge against him.[14] He also avers that he was not in the farm during the incident as he stayed in the *pabasa* until 10 o'clock in the evening and thereafter went home.[15]

In his brief,[16] appellant pointed out that Kenneth's retraction of his previous statement and his belated and perjured new version is highly speculative and unsupported by evidence. Also, according to him, the negative results of the fingerprinting analysis[17] and paraffin test[18] conducted the following day after the incident prove his innocence.

Ruling of the Regional Trial Court

On 4 January 2012, the RTC rendered a decision finding appellant guilty of Murder. The dispositive portion of the decision reads:

> WHEREFORE, the [c]ourt hereby renders judgment finding accused Angelo Buenafe y Briones guilty beyond reasonable doubt of the crime of MURDER and sentencing him to suffer the penalty of reclusion perpetua. Angelo Buenafe y Briones is also ordered to pay the heirs of Rommel Alvarez the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[19]

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[13] *Rollo*, pp. 28-61.

[14] CA *rollo*, p.52.

[15] TSN, 2 February 2011, p.11.

[16] *Rollo,* pp. 28-61.

[17] TSN, 17 October, 2006, pp. 9-10.

[18] TSN, 19 October 2010, pp. 4-5.

[19] Records, p. 509.

Ruling of the Court of Appeals

The CA sustained appellant's conviction. It was fully convinced that there is no ground to deviate from the findings of the RTC. The dispositive portion of the decision reads:

> **WHEREFORE,** the instant appeal is **DENIED.** The assailed Decision dated January 4, 2012 of the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93, in Criminal Case No. 5306-SPL is hereby **AFFIRMED.**[20]

Appellant appealed the decision of the CA. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution[21] dated 13 August 2014, this Court required the parties to submit their respective supplemental briefs. The appellee manifested that it will no longer file a supplemental brief since all the issues raised were already thoroughly discussed in the Appellee's Brief filed with the CA.[22] Appellant on the other hand, submitted his supplemental brief[23] on 31 October 2014.

In his brief, appellant assigned the following errors:

I. THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT THERE IS NO MOTIVE ON THE PART OF KENNETH TO FALSELY TESTIFY AND WHEN, CONTRARY TO THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO PRESUMPTION OF INNOCENCE, IT IGNORED THE FACT THAT THE DEFENSE WITNESS LIKEWISE HAD NO MOTIVE TO FALSELY TESTIFY;

II. THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT THERE WAS POSITIVE, CLEAR AND CATEGORICAL TESTIMONY OF KENNETH AND WHEN IT DID NOT

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[20] *Rollo*, p. 9

[21] *Id*. at 16-17.

[22] *Id*. at 18-19.

[23] *Id*. at 28-59.

RULE THAT THE SAID TESTIMONY IS INCREDIBLE AND CONTRARY TO HUMAN EXPERIENCE AND ADMISSIONS OF THE VERY SAME WITNESS.

Our Ruling

Treachery as a qualifying circumstance in the crime of Murder

This Court finds that the circumstance of treachery should be appreciated, qualifying the crime to Murder. According to the RPC:

ARTICLE 248. *Murder.* — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by reclusion temporal in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Thus, the elements of murder are: (1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in

Article 248 of the RPC; and (4) that the killing is not parricide or infanticide.[24]

Furthermore, there is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[25]

The requisites of treachery are:

(1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and

(2) Deliberate or conscious adoption of such means, method, or manner of execution.[26]

In this case, the victim was merely unwarily texting inside the tent when the two men held him from behind so that the appellant can deliver blows to his abdomen. The victim was too unprepared and helpless to defend himself against these three men. Furthermore, appellant's acts of dragging him to the nearby hut and using a lead pipe (*sumpak*) evidently shows that he consciously adopted means to ensure the execution of the crime.

The defense of denial cannot be given more weight over a witness' positive identification

Appellant denies the accusations on the ground that he has no ill-motive to kill his close friend Rommel. This alibi deserves

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[24] *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

[25] *Cirera v. People,* G.R. No. 181843, 14 July 2014, 730 SCRA 27, 47 citing Revised Penal Code,

[26] *People v. Pirame,* 384 Phil. 286, 301 (2000) citing *People v. Gatchalian*, 360 Phil. 178, 196-197 (1998).

scant consideration. As a general rule, proof of motive for the commission of the offense charged does not show guilt and absence of proof of such motive does not establish the innocence of accused for the crime charged such as murder.[27]

In *People v. Ducabo*,[28] this Court held that motive is irrelevant when the accused has been positively identified by an eyewitness. Intent is not synonymous with motive. Motive alone is not a proof and is hardly ever an essential element of a crime.[29]

Evidently, appellant's intent to kill was established beyond reasonable doubt by the manner the crime was committed.[30] This can be seen when he even brought two other men to accompany him in killing Rommel and chose to execute it late at night to ensure that no other people can witness the crime.

During the Direct Examination, Kenneth positively identified appellant as the person who killed Rommel:

Q: Now, while Kuya Rommel was being held from behind being held by his two hands from behind by these two men, what else happened?
A: Kuya Angelo approached and whispered to Kuya Rommel sir.

x x x x x x x x x

Q: And after whispering something and after Angelo having whispered something to Kuya Rommel, what happened next?
A: After Kuya Angelo whispered something to Kuya Rommel, he was punched on his stomach, on his abdomen, sir.

Q: Who was punched on his stomach, on his abdomen?
A: Kuya Angelo punched Kuya Rommel on his abdomen, sir.

Q: How many times?
A: Several times, sir.

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[27] *Cupps v. State*, 97 Northwestern Reports, 210.

[28] *People v. Ducabo,* 560 Phil. 709, 723-724 (2007).

[29] *People v. Ballesteros,* 349 Phil. 366, 374 (1998).

[30] *Esqueda v. People,* 607 Phil. 480, 505 (2009).

Q: And because of which, what happened to Kuya Rommel?
A: He fell down, Sir.

Q: And then after falling down, what happened next?
A: After Kuya Rommel slamped, I witnessed the two men dragging Kuya Rommel towards the kubo or nipa hut, sir.

x x x x x x x x x

Q: Thereafter, what else happened?
A: I saw Kuya Angelo poked something to the bed which was a lead pipe which he was earlier carrying when he entered that room.

Q: What did your Kuya Angelo do with that "tubo" which he poked to the bed?
A: He fired it, sir.[31]

Appellant's contention – that Kenneth's testimony is perjured and highly speculative – is bereft of merit. It should be noted that Kenneth has no motive to testify falsely against the accused[32] as it was even appellant who recommended him for the job.[33]

This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.[34]

Lapse of considerable length of time before witness comes forward does not taint his credibility

Witnessing a crime is an unusual experience that elicits different reactions from the witnesses, and for which no clear

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[31] TSN, 20 February 2007; pp. 10-11, April 24, 2007, p. 3.

[32] *People v. Judge Lagos,* 705 Phil. 570, 579 (2013).

[33] TSN, 20 February 2007, p. 4.

[34] *People v. Abat*, G.R. No. 202704, 2 April 2014, 720 SCRA 557, 564 citing *People v. Banzuela*, 723 Phil. 797, 814 (2013).

cut standard form of behavior can be drawn.[35] In *People v. Clariño*[36] this court held that death threats, fear of reprisal, and even a natural reluctance to be involved in a criminal case have been accepted as adequate explanations for the delay in reporting crimes. Moreover, the delay in the witness' disclosure of the identity of the culprit will not affect his credibility nor lessen the probative value of his testimony.[37]

In this case, appellant's threat that he will kill Kenneth if he informs the former's wife of his philandering[38] is an acceptable reason for the witness' delay in coming forward and disclosing the identity of the appellant.

Appellant further maintains that Kenneth's retraction of his previous statement disavowing any knowledge regarding the incident should not be considered against him.[39] This Court is not persuaded. What this Court disfavors are the retractions of testimonies which have been solemnly taken before a court of justice in an open and free trial and under conditions precisely sought to discourage and forestall falsehood simply because one of the witnesses who had given the testimony later on changed his mind. Such a rule will make solemn trials a mockery and place the investigation of the truth at the mercy of unscrupulous witnesses.[40] In the case at bar, Kenneth's recanted statement was made before the police and not in open court. In fact, the retraction of Kenneth's previous statement was made during the initial investigation of the charges against the appellant, which is clearly before the case was filed in court.

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[35] *People v. Plazo*, 403 Phil. 347, 356-357 (2001).

[36] 414 Phil. 358, 370 (2001).

[37] *People v. Labitad*, 431 Phil. 453, 458 (2002).

[38] TSN, 12 September 2007, pp. 8-9.

[39] *Rollo*, pp. 28-61.

[40] *Firaza v. People*, 547 Phil. 573, 584 (2007).

It is not physically impossible for the witness to be at the scene of the crime

Appellant also tried to destroy the credibility of Kenneth's testimony by relying on his housemate's statement that she saw Kenneth sleeping at around 9:00 in the evening.[41] We are not convinced.

In *People v. Taboga*,[42] physical impossibility was defined as the distance and the facility of access between the *situs* of the crime and the location of the accused when the crime was committed. It must be demonstrated that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[43]

In this case, the Alpa Farm is a mere fifteen (15) to twenty (20) minute walk from Kenneth's residence.[44] Thus, from 9:00 in the evening, it is not physically impossible for Kenneth to be in Alpa Farm at around 10:00 in the evening which is the time when the incident occurred.

Fingerprint analysis and Paraffin Tests are not conclusive

The positive identification made by the prosecution witnesses bears more weight than the negative fingerprint analysis and paraffin tests results conducted the day after the incident.

In *People v. Cajumocan*,[45] this Court ruled that paraffin tests, in general, have been rendered inconclusive by this Court. Scientific experts concur in the view that the paraffin test was

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[41] TSN, 28 September 2010, pp. 4-5.

[42] *People v. Taboga*, 426 Phil. 908, 925 (2002).

[43] *People v. Amora*, G.R. No. 190322, 26 November 2014, 742 SCRA 667.

[44] TSN, 28 September 2010, p. 4.

[45] 474 Phil. 349, 358 (2004).

extremely unreliable for use. It can only establish the presence or absence of nitrates or nitrites on the hand; however, the test alone cannot determine whether the source of the nitrates or nitrites was the discharge of a firearm. The presence of nitrates should be taken only as an indication of a possibility or even of a probability but not of infallibility that a person has fired a gun, since nitrates are also admittedly found in substances other than gunpowder.

Furthermore, negative findings in the fingerprint analysis do not at all times lead to a valid conclusion for there may be logical explanations for the absence of identifiable latent prints other than the appellant not being present at the scene of the crime. The absence of latent fingerprints does not immediately eliminate the possibility that the appellant could have been at the scene of the crime. [46]

In this case, Kenneth testified in the trial court that it was indeed the appellant who killed Rommel.[47] It should also be considered that the fingerprint analysis[48] and the paraffin test[49] were conducted the following day after the incident. Thus, it is possible for appellant to fire a gun and yet bear no traces of nitrate or gunpowder as when the hands are bathed in perspiration or washed afterwards.[50]

Damages and civil liability

This Court resolves to modify the damages awarded by the appellate court. In line with recent jurisprudence,[51] appellant shall pay the heirs of Rommel Alvarez, ₱75,000.00 as civil

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[46] *People v. Sartagoda*, G.R. No. 97525, 7 April 1993, 221 SCRA 251, 256-257.

[47] TSNs, 20 February 2007, pp. 10-12; 24 April 2007, p. 3.

[48] TSN, 17 October 2006, pp. 9-10.

[49] TSNs, 19 October 2010, pp. 4-5; 30 March 2011, p. 5.

[50] *People v. Pagal,* 338 Phil. 946, 951 (1997).

[51] *People v. Jugueta,* G.R. No. 202124, 5 April 2016.

indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for the crime of Murder. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Judgment until fully paid.

WHEREFORE, the 19 December 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05415 is **AFFIRMED** with **MODIFICATIONS**. Appellant ANGELO BUENAFE *y* BRIONES is found **GUILTY** beyond reasonable doubt of the crime of Murder and shall suffer a penalty of *Reclusion Perpetua* and shall pay the Heirs of Rommel Alvarez ₱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 six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 214186. August 3, 2016]

RODFHEL BACLAAN TORREFIEL, MYRA SUACILLO, LORLIE ORENDAY, SHEELA LAO, and LEODELYN LIBOT, *petitioners, vs.* **BEAUTY LANE PHILS., INC./ MS. MA. HENEDINA D. TOBOJKA,** *respondents.*

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[*] Additional Member per Raffle dated 13 July 2016.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTIONS; WHEN THERE IS DIVERGENCE IN FINDINGS OF FACT OF DECIDING TRIBUNALS.—** [O]nly questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court. The Court is not a trier of facts and does not routinely re-examine the evidence presented by the contending parties. Nevertheless, the divergence in the findings of fact by the LA and the CA, on the one hand, and that of the NLRC on the other – as in this case – is recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that petitioners were illegally dismissed.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF; DISMISSAL; EMPLOYMENT; EMPLOYER MUST PROVE BY SUBSTANTIAL EVIDENCE THE LAWFUL CAUSE FOR DISMISSAL.—** It is settled that in employee termination disputes such as the present case, the employer bears the burden of proving that the employee's dismissal was for a lawful cause. Equipoise is not enough and the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause. Although it is true that the guilt of a party in administrative proceedings need not be shown by proof beyond reasonable doubt, there must be substantial evidence to support it. Substantial evidence means that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. x x x [T]he employer *must prove by substantial evidence the facts and incidents* upon which the accusations are made. Unsubstantiated suspicions, accusations, and conclusions of the employer, as in this case, are not enough to justify an employee's dismissal.

3. **ID.; ID.; POSITIONS OF TRUST; MANAGERIAL EMPLOYEE AND EMPLOYEES WHO REGULARLY HANDLE SIGNIFICANT AMOUNTS OF MONEY AND PROPERTY.—** [T]here are two (2) classes of positions of trust:

the first class consists of managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, and the like who, in the normal and routine exercises of their functions, regularly handle significant amounts of money or property.

4. ID.; ID.; FAILURE TO INFORM AN EMPLOYEE OF THE CHARGES AGAINST HIM DEPRIVES HIM OF DUE PROCESS.— [T]wo (2) written notices are required before termination of employment can be legally effected, namely: (1) the notice which apprises the employee of the **particular acts or omissions** for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him. The failure to inform an employee of the charges against him deprives him of due process.

5. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT PRESENT AS THE NLRC'S PRONOUNCEMENT OF ILLEGAL DISMISSAL SQUARES WITH EXISTING LEGAL PRINCIPLES AND IS SUPPORTED BY THE RECORDS OF THE CASE.— [T]o justify the grant of the extraordinary remedy of *certiorari*, it must be satisfactorily shown that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. Measured against these parameters, the Court finds that the CA committed reversible error in granting respondents' *certiorari* petition since the NLRC did not gravely abuse its discretion in finding petitioners to have been illegally dismissed. The NLRC's ruling cannot be equated to a capricious and whimsical exercise of judgment since its pronouncement of illegal dismissal squares with existing legal principles and is supported by the records of the case.

APPEARANCES OF COUNSEL

Patricio L. Boncayao, Jr., for petitioners.
Chavez Miranda Aseoche Law Offices for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a petition for review on *certiorari*[1] assailing the Decision[2] dated May 5, 2014 and the Resolution[3] dated September 10, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133299, which reversed the Decision[4] dated October 31, 2013 and the Resolution[5] dated November 27, 2013 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 09-00513-13,[6] and reinstated the Decision[7] dated July 31, 2013 of the Labor Arbiter (LA) in NLRC NCR Case No. 03-04299-13 dismissing the complaint for illegal dismissal filed by petitioners Rodfhel Baclaan Torrefiel (Torrefiel), Myra Suacillo (Suacillo), Lorlie Orenday (Orenday), Sheela Lao (Lao), and Leodelyn Libot (Libot; collectively, petitioners) for lack of merit.

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[1] *Rollo*, Vol. I, pp. 27-91.

[2] *Id*. at 93-107. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice Andres B. Reyes, Jr. and Associate Justice Manuel M. Barrios concurring.

[3] *Id*. at 108-109.

[4] *Id*. at 291-333. Penned by Commissioner Teresita D. Castillon-Lora with Presiding Commissioner Raul T. Aquino and Commissioner Erlinda T. Agus concurring.

[5] *Id*. at 376-379.

[6] Docketed NLRC LAC No. 09-002513-13 in the November 27, 2013 Resolution.

[7] *Id*. at 217-223. Penned by LA Jose Antonio C. Ferrer.

The Facts

Respondent Beauty Lane Phils., Inc. (Beauty Lane), with respondent Ma. Henedina D. Tobojka (Tobojka; collectively; respondents) as its president,[8] is a company engaged in the importation and distribution of certain beauty, aesthetic, and grooming products including, among others, a product called "Brazilian Blowout." "Brazilian Blowout" is a set of grooming products composed of five (5) items worth a total of ₱40,000.00. It has a short lifespan and may only be used for a maximum of 50 times.[9]

As exclusive distributor of "Brazilian Blowout," Beauty Lane provides free training to its prospective buyers through its "beauty educators" who conduct trainings and demonstrations at the company's training center, located in its three (3)-storey warehouse in Las Piñas City. The second floor of the said warehouse is used as storage area, while a portion of the ground floor serves as sleeping area of some of its employees.[10]

On January 3 to 5, 2013, respondents conducted an inventory in the warehouse and discovered discrepancies between the recorded stocks and the actual stocks of supply, particularly its "Brazilian Blowout" product. Thus, respondents conducted an investigation and installed closed circuit television (CCTV) cameras on the premises. On January 25, 2013, Beauty Lane received information from its Sales Manager, Mark Quibral (Quibral), that one of its former employees is selling sets of "Brazilian Blowout" at a much lower price. This prompted the warehouse supervisors to meet and discuss the results of the inventory, by virtue of which it was discovered that some sets of "Brazilian Blowout" were incomplete. It appeared that a different item is taken from each set and the items taken are combined to make a complete set.[11]

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[8] *Id*. at 217.

[9] See *id*. at 94.

[10] See *id*. at 94-95 and 560.

[11] See *id*. at 95 and 218.

On February 1, 2013, respondents conducted a full-blown investigation, summoning and questioning employees on their involvement in the apparent pilferage.[12] After comparing its client list vis-à-vis the salons and online sellers offering "Brazilian Blowout," respondents discovered that Rean Metro Salon, a client registered under the account of Torrefiel who is a Sales Coordinator, had not been ordering "Brazilian Blowout" for months but continued to offer it and its allied services. Various salons and online sites were also selling whole sets of "Brazilian Blowout" as well as incomplete sets, which respondents surmised were leftovers from the sets used during training sessions. They also discovered that Torrefiel and Lao, a beauty educator, sold Gigi Professional Waxing System to Angelic Nails Spa and Waxing Salon, which is not among respondents' approved clients. Later that day, Coke Gonzales (Gonzales), a Sales Executive, confided to Tobojka that Lao had asked her to sell opened bottles of Brazilian Blowout Solution and Anti-Residue Shampoo.[13]

On February 4, 2013, respondents issued Notices to Explain and Preventive Suspension[14] against petitioners and two (2) other employees, including Marcel Mendoza (Mendoza),[15] a beauty educator who also happened to operate his own salon.[16] Torrefiel and Lao denied any participation in the alleged pilferage and maintained that they had no access to the "Brazilian Blowout" products.[17] Lao further clarified that her access is limited to the training center where no "Brazilian Blowout" sets are stored. However, she admitted asking for help from Gonzales in selling the "Brazilian Blowout" inventory of one of respondents' clients,

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[12] See *id*. at 96 and 292.

[13] See *id*. at 96 and 220.

[14] *Id*. at 626-627, 631-632, 637-637A, 641-642, and 646-647.

[15] *Id*. at 220 and 292-293.

[16] See *rollo*, Vol. II, pp. 825 and 828.

[17] See Letters filed by Torrefiel (undated) and Lao (February 4, 2013); *rollo*, Vol. I, pp. 628 and 633, respectively.

Skinsational Salon, because its owner sought her help in disposing the products which did not sell well thereat.[18]

For her part, Libot who was also a beauty educator, denied conniving with Torrefiel and Lao and maintained that she reported all her activities to Quibral.[19] Meanwhile, Suacillo and Orenday asserted their lack of information on the allegations against them, pointing out that they were not among those questioned during the February 1, 2013 investigation.[20]

In statements dated February 4 and 12, 2013, Mendoza who, as stated earlier, also operated his own salon and was also asked to explain his participation in the pilferage, implicated Torrefiel and Lao in the anomaly.[21] According to him, Torrefiel and Lao offered him a bottle of Professional Smoothing Solution which is part of the "Brazilian Blowout" set for only ₱18,000.00. Lao was purportedly selling the same for her friend who owned a salon.[22]

On February 27, 2013, an administrative hearing was held where petitioners, however, failed to appear. Instead, they sent letters stating that they had already submitted their respective written explanations, and that they had an appointment with the Department of Labor of Employment (DOLE) on the same day.[23] After assessing the evidence before them, respondents sent Notices of Termination[24] to petitioners on February 28, 2013. Meanwhile, in an entrapment operation conducted by the National Bureau of Investigation on February 18, 2013,

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[18] See *id*. at 633.

[19] See Letter dated February 4, 2013 of Libot; *id*. at 638.

[20] See Letters of Suacillo and Orenday both dated February 4, 2013; *id*. at 643 and 648.

[21] See *id*. at 221. See also *rollo*, Vol. II, pp. 825-828.

[22] See *rollo*, Vol. II, p. 826. See also *rollo*, Vol. I, p. 221.

[23] See *rollo*, Vol. I, pp. 97 and 220.

[24] *Id*. at 629-630, 634-636, 639-640, 644-645, and 649-650. See also *id*. at 97, 218, and 293.

two (2) former employees, namely, Romar Geroleo and Cipriano Layco, were caught in possession of "Brazilian Blowout" products.[25]

On March 18, 2013, petitioners filed a complaint[26] for illegal dismissal and money claims before the NLRC, averring that respondents had no valid cause in dismissing them as none of them had access to the stolen products.[27] Specifically, Torrefiel maintained that he merely prepared the sales orders and it was the warehouse supervisor and the sales assistant who had access to the products.[28] On the other hand, Lao and Libot emphasized that they were beauty educators for Gigi Professional Waxing System products only and, as such, had no access to "Brazilian Blowout" products.[29] Meanwhile, Suacillo contended that she is merely an Administrative Assistant whose duties are limited to maintaining personnel files, preparing checks, managing office supplies, administering examinations to applicants, and cleaning the training center. She also emphasized that she was not among those investigated on February 1, 2013.[30] Lastly, Orenday clarified that she was a Sales Assistant who merely encoded orders and delivery receipts.[31]

The LA's Ruling

In a Decision[32] dated July 31, 2014, the LA dismissed the complaint for lack of merit, holding that there was valid cause for petitioners' dismissal and due process therefor was observed. The LA pointed out that while no direct evidence was presented

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[25] See *id*. at 155-156.

[26] *Id*. at 116-117, including dorsal portions.

[27] See Position Paper dated May 14, 2013; *id*. at 118-129.

[28] See *id*. at 118-120.

[29] See *id*. at 120-123.

[30] See *id*. at 124.

[31] See *id*. at 125.

[32] *Id*. at 217-223.

showing that petitioners indeed pilfered the "Brazilian Blowout" products, the circumstances of the case show that petitioners are guilty of the charges against them.[33] The LA cited Torrefiel and Lao's failure to refute the statements of their colleagues, Mendoza and Gonzales, directly identifying them as the ones selling sets of "Brazilian Blowout" at a lower price. They also failed to deny Mendoza's averment that they had met with him and that the latter confronted them about the "Brazilian Blowout" sets which they tried to sell him.[34] With respect to Suacillo and Orenday, the LA gave credence to respondents' claim that they held the positions of Office Assistant and Inventory Officer, respectively, and as such, their failure to report the discrepancy in the recorded and actual stocks point to their complicity in the pilferage.[35]

Aggrieved, petitioners appealed[36] to the NLRC.

The NLRC Ruling

In a Decision[37] dated October 31, 2013, the NLRC reversed the decision of the LA, finding that petitioners were illegally dismissed, after observing that there was no proof of their involvement in the pilferage.[38]

The NLRC found merit in petitioners' defense that they did not have access to the stolen items,[39] and explained that they could not be dismissed for loss of trust and confidence since none of them held positions where trust and confidence are requirements for continued employment, except for Torrefiel

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[33] See *id*. at 221-223.

[34] See *id*. at 222.

[35] See *id*. at 223.

[36] See Appeal Memorandum dated September 1, 2013; *id*. at 224-262.

[37] *Id*. at 291-333.

[38] See *id*. at 314, 322, 328, and 330.

[39] See *id*. at 311, 318, and 326.

who, in any case, was not shown to have committed an act that would justify the loss of trust and confidence.[40]

With respect to Torrefiel and Lao's alleged selling of "Brazilian Blowout" products at a lower price, the NLRC gave credence to the affidavit[41] of Lea Tagupa, the owner of Skinsational Salon, who categorically stated that she had asked them to sell the "Brazilian Blowout" products she (Tagupa) previously bought from Beauty Lane but was not able to sell at her salon. According to the NLRC, Tagupa's affidavit should be given more weight considering that she is a disinterested party, as opposed to Mendoza and Gonzales whose statements are biased since they were among those investigated upon and their statements were obtained while the investigation was ongoing.[42] Moreover, the availability of "Brazilian Blowout" products and services in salons that no longer ordered from respondents does not prove that Torrefiel was guilty of pilferage since respondents themselves pointed out that "Brazilian Blowout" products are also available abroad and online, albeit illegally.[43]

As regards Suacillo, Orenday, and Libot, the NLRC noted the lack of evidence to substantiate the allegations against them.[44] It remarked that contrary to respondents' claim, Orenday was no longer an Inventory Officer at the time the alleged anomalies happened since she was issued a Notice of Personnel Action reassigning her as Sales and Administrative Assistant.[45] On the other hand, Suacillo's duties as Office Assistant did not include monitoring and keeping an inventory. Besides, she had no knowledge of the inventory conducted which was carried out

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[40] See *id*. at 312 and 321.

[41] *Id*. at 191-193.

[42] See *id*. at 309-310.

[43] See *id*. at 315-316.

[44] See *id*. at 322, 328, and 330.

[45] *Id*. at 325.

by her supervisors.[46] In any case, Suacillo and Orenday were terminated without due process, considering that the notices sent to them failed to specify the particular acts or omission charged and they were not among the employees questioned during the February 1, 2013 investigation.[47] Consequently, respondents were ordered to reinstate petitioners and pay them full backwages, as well as their wages from January 6, 2013 to February 4, 2013, moral and exemplary damages, and attorney's fees.[48]

Respondents moved for reconsideration,[49] which was, however, denied by the NLRC in its Resolution[50] dated November 27, 2013. Thus, Beauty Lane elevated the case to the CA *via* petition for *certiorari*.[51]

The CA Ruling

In a Decision[52] dated May 5, 2014, the CA reversed the ruling of the NLRC and reinstated the findings of the LA.[53] It pointed out that there was no dispute that "Brazilian Blowout" products were missing from respondent's warehouse and that petitioners were individuals who had access to the room where the said products were stored. Furthermore, petitioners were implicated by their colleagues – namely, Mendoza and Gonzales – who had no axe to grind against them. Meanwhile, petitioners offered nothing but an all-encompassing denial without even bothering to controvert the allegations of their colleagues who had

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[46] See *id*. at 326-327.

[47] See *id*. at 322-324, 327-328, and 331.

[48] See *id*. at 332.

[49] See Motion for Partial Reconsideration [Re: Decision dated 31 October 2013] dated November 15, 2013. *Id.* at 334-375.

[50] *Id*. at 376-379.

[51] Dated December 27, 2013. *Id*. at 497-554.

[52] *Id*. at 93-107.

[53] *Id*. at 106.

confessed.[54] These, according to the CA, constitute substantial evidence that petitioners pilfered the "Brazilian Blowout" products from respondent's warehouse which amount to serious misconduct or willful disobedience to the lawful orders of their employer – both of which are just causes for their dismissal.[55]

Anent the issue of due process, the CA agreed with the LA that the due process requirements of notice and hearing were complied with since petitioners were asked to submit their respective written explanations in their participation in the pilferage and were notified of the administrative hearing set on February 27, 2013. That they did not attend the same was their own choice and was prompted by their stance that they had already submitted their written explanations on the matter.[56]

Dissatisfied, petitioners filed a motion for reconsideration,[57] which was, however, denied in a Resolution[58] dated September 10, 2014; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA committed any reversible error in reinstating the LA ruling holding that petitioners were validly dismissed.

The Court's Ruling

At the outset, it should be pointed out that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court.[59] The Court is not a trier of facts and does not routinely re-examine the evidence presented by the contending parties. Nevertheless, the divergence in the

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[54] See *id*. at 101.

[55] See *id*. at 102-104.

[56] See *id*. at 105-106.

[57] See motion for reconsideration dated May 30, 2014; *id*. at 110-114.

[58] *Id*. at 108-109.

[59] See Section 1, Rule 45 of the Rules of Court.

findings of fact by the LA and the CA, on the one hand, and that of the NLRC on the other – as in this case – is a recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that petitioners were illegally dismissed.[60]

After a thorough review of the records, the Court finds the petition meritorious.

Contrary to the CA's finding, petitioners did not proffer bare denials of the allegations against them and their access to the stolen products is not undisputed. In their joint Position Paper,[61] petitioners all asserted that there were two (2) Warehouse Supervisors, two (2) Stockmen, and two (2) Warehouse Assistants manning Beauty Lane's warehouse.[62] Further, Torrefiel explained that whenever an order is placed, a Sales Assistant encodes the Sales Order and issues Delivery Receipts which are then sent electronically to the Warehouse Supervisor who, in turn, dispatches the delivery of purchases items to clients. While he admitted that there were a few times when he personally claimed his clients' orders from the company's Sales Assistants, Torrefiel maintained that they were duly covered by Sales Invoice and Delivery Receipts and were recorded by the Sales Assistants. There were also instances when the clients themselves picked-up the items they purchased from Sales Assistants in respondents' office.[63] This statement was corroborated by Orenday who, apart from clarifying that she was not among those invited for questioning during the February 1, 2013 investigation, averred that as Sales Assistant, she accepted orders from clients and from Sales Executives, and encoded the Sales Orders and Delivery Receipts which are then sent electronically to the

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[60] See *Baron v. EPE Transport, Inc.*, G.R. No. 202645, August 5, 2015; citations omitted.

[61] Dated May 14, 2013. *Rollo*, pp.118-129.

[62] See *id*. at 119-120 and 123-125.

[63] See *id*. at 119.

Warehouse Supervisor. It is the Warehouse Supervisor who prepares orders and allocates the deliveries to clients.[64]

On the other hand, Lao and Libot clarified that as beauty educators, they only used Gigi Professional Waxing System in their demonstrations and trainings and had no access to the "Brazilian Blowout" products which are not stored at the training center.[65] Although Lao admitted that she was selling "Brazilian Blowout" products and that she asked Gonzales if the latter had a buyer for it, she stressed that the said products came from one of respondents' clients who asked her to resell them as she (client) was not able to use it.[66] Meanwhile, Libot claimed that she reported all her activities to Quibral, emphasizing too that she does not take orders from customers since orders are placed through the Sales Executive assigned to the customers' respective areas.[67] For her part, Suacillo asserted that she was not invited for questioning during the February 1, 2013 investigation and that, as Administrative Assistant, her responsibilities were limited to maintaining the employee files, preparing checks, monitoring office supplies, administering tests to applicants, and cleaning the training center.[68]

The Court also takes exception to the CA's ruling that petitioners' participation in the pilferage has been shown by substantial evidence. It is settled that in employee termination disputes such as the present case, the employer bears the burden of proving that the employee's dismissal was for a lawful cause. Equipoise is not enough and the employer must affirmatively show rationally adequate evidence that the dismissal was for a justifiable cause.[69] Although it is true that the guilt of a party

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[64] See *id*. at 125.

[65] See *id*. at 120-123.

[66] See *id*. at 121.

[67] See *id*. at 122-123.

[68] See *id*. at 124.

[69] See *Moreno v. San Sebastian College-Recoletos, Manila*, 573 Phil. 533, 547 (2008).

in administrative proceedings need not be shown by proof beyond reasonable doubt, there must be substantial evidence to support it.[70] Substantial evidence means that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[71]

In this case, respondents dismissed petitioners on the strength of circumstantial evidence which did not establish their participation in the pilferage. As aptly pointed out by the NLRC, the statements given by Mendoza and Gonzales only prove that Torrefiel and Lao offered them "Brazilian Blowout" products at a lower price. There is nothing in their testimonies that prove that Torrefiel and Lao pilfered the said items from Beauty Lane. On the other hand, Torrefiel and Lao persuasively explained that Tagupa, the owner of Skinsational Salon which is one of Beauty Lane's clients, had asked for their help in disposing of the "Brazilian Blowout" products she previously bought from Beauty Lane but did not sell well in her salon.[72] This statement was corroborated by Tagupa herself who executed an affidavit which reads:

> I bought 1 set of [B]razilian [B]lowout (basic blowout for my salon as a[n] additional service to offer, the item [was] paid in full but unfortunately the service for the product did not [turn] out good, we were not able to consume the whole set. As salon owner[,] I have to find [a] way [on] how I can regain my investment for the said product. [Torrefiel] being the sales executive in charge in (sic) our salon and [Lao] whom I've known being the train[e]r of my staff for [G]igi [W]axing, I asked [for] their help to resell the products on other Beauty Lane clients for [₱]20,000[.00] (twenty thousand pesos). I asked them to find [a] buyer for me, but because the products were on my other branch in CALAPAN, MINDORO, I told them to inform me once they find [a] buyer so [that] I can

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[70] *Anscor Transport & Terminals, Inc. v. NLRC*, 268 Phil. 154, 158 (1990).

[71] *Surigao del Norte Electric Cooperative, Inc. v. Gonzaga*, 710 Phil. 676, 687-688 (2013).

[72] See *rollo*, Vol. I, pp. 308-309.

bring the items here in [M]anila. In return, I agree[d] that I will be giving them commission.[73]

The NLRC was correct in giving more weight to Tagupa's statement over Mendoza's averment that Torrefiel and Lao pilfered from the company. In the first place, Tagupa is a party disinterested to the case and has no reason to state falsities. On the other hand, Mendoza was one of the suspects in the pilferage and was among those questioned during the investigation. She also confessed to committing several irregularities in handling "Brazilian Blowout" products as beauty educator, including using the demonstration sets and tools issued by Beauty Lane in his own salon.[74] Portions of her statement dated February 4, 2013 read:

I have received a bottle of Brazilian Blowout Professional Smoothing Solution which **I used some of it to service my customers at my salons**. Some of the solutions I used was to **service my co-employees** namely: Sheela Lao & Lyn Ascillo, at my residence. **I made some erroneous entries at my Brazilian Blowout usage summary sheet to cover up such services** in terms of names and number of caps used.

x x x x x x x x x

I have used tools and implements, products for sampling at my salon wherein I already made a list of such items which are still in my custody and promise to surrender to Beauty Lane Philippines.
x x x

[Lao] and [Torrefiel] offered me to buy a Professional Smoothing Solution at a price of ₱18,000.00 a few weeks ago. I did not buy any product from them and when I asked where the solution come from[,] the fact given to me [was] that [Lao] had a friend that owned a salon that wanted to sell their solution – and that [Torrefiel] was just reselling the solution for [Lao].

On January 30, 2013[,] Ma['']am Becky Lopez, Mark Quebral, Sim Ballon **confronted me in a closed door meeting where they**

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[73] *Id*. at 191.

[74] See *id*. at 309-310.

discussed issues regarding some missing items at the warehouse and that if I knew anything about the missing items or someone trying to dispose of these items. A few hours after being presented with these facts, I was ready to meet up with [ma'am] Dina and face allegations made against me and wanted to come clean. x x x.[75] (Emphases supplied)

Notably, even Mendoza himself stated that Torrefiel and Lao had told him that they were just reselling the Professional Smoothing Solution for their friend who owned a salon.[76] Hence, although Torrefiel and Lao were selling the "Brazilian Blowout" at a lower price, there is no proof that they stole the same from Beauty Lane. On the contrary, the evidence on record all support their explanation that Tagupa merely solicited their help in disposing of the "Brazilian Blowout" products she (Tagupa) previously bought from respondents. To be sure, although Torrefiel and Lao's acts may involve a conflict of interest since Beauty Lane is the exclusive distributor of "Brazilian Blowout" products in the Philippines, this does not prove that they were guilty of the pilferage for which they were dismissed.

Moreover, the fact that Rean Metro Salon stopped ordering "Brazilian Blowout" products from respondents but continued to offer the same and its allied service months later does not prove that Torrefiel stole the missing products from respondents, especially without showing that the "Brazilian Blowout" products used by Rean Metro Salon came from respondents' stocks. To recall, respondents themselves admitted that "Brazilian Blowout" products are available in other establishments and online, although illegally. It is thus entirely possible that Rean Metro Salon may have sourced its supply of "Brazilian Blowout" products from other entities offering it.

In addition, the LA and the CA hastily concluded that Torrefiel was guilty of pilferage simply because he was seen at Rean Metro Salon. As properly observed by the NLRC, his presence

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[75] *Rollo*, Vol. II, pp. 825-826.

[76] See *id*. at 826.

thereat was accounted for by his co-petitioner Libot who narrated that they went there to follow up an order before proceeding to another client. Incidentally, Libot, who was accused of conniving with Torrefiel, asserted that she reported all her activities to Quibral.[77] Notably, Quibral did not deny this.

At this juncture, it should be pointed out that while Torrefiel was essentially a salesman, he did not occupy a position of trust and confidence, the loss of which is a just cause for dismissal. To recall, there are two (2) classes of positions of trust: the first class consists of managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, and the like who, in the normal and routine exercise of their functions, regularly handle significant amounts of money or property.[78]

Here, respondents have not shown that Torrefiel had access to their money or property. On the contrary, Torrefiel maintained that he merely took orders from clients but had no access to the respondents' products which are handled by warehouse supervisors and sales assistants. At any rate, even assuming that he regularly handled significant amounts of money or property, he cannot be dismissed on the ground of loss of trust and confidence considering that the basis therefor has not been established. It is settled that for dismissal based on such ground to be valid, the act that would justify the loss of trust and confidence must be based on a willful breach of trust and founded on clearly established facts which was not the case here.[79]

The Court also agrees with the NLRC's observation that the rudiments of due process were not observed in dismissing Suacillo and Orenday. As correctly pointed out by the NLRC,

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[77] See *rollo*, Vol. I, pp. 315-316.

[78] *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008).

[79] See *id*. at 629.

the copies of the Notices to Explain and Preventive Suspension issued to them did not specify the charges against them but simply stated that they condoned and failed to report anomalies to the management.[80] Time and again, the Court has repeatedly held that two (2) written notices are required before termination of employment can be legally effected, namely: (1) the notice which apprises the employee of the **particular acts or omissions** for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him.[81] The failure to inform an employee of the charges against him deprives him of due process.[82] Besides, Suacillo and Orenday were not among those questioned during the February 1, 2013 investigation.[83] Hence, they cannot be presumed to know exactly what anomalies respondents were referring to.

In any event, there was no valid reason for their dismissal considering the lack of proof of their involvement in the alleged pilferage. As conveyed by the NLRC, Suacillo's duties as Office Assistant did not include monitoring and keeping an inventory and she cannot be presumed to know the results of the inventory which was conducted by her supervisors.[84] Meanwhile, Orenday was no longer an Inventory Officer at the time the alleged anomalies happened since she was reassigned as Sales and Administrative Assistant.[85] She cannot, therefore, be charged of responsibility for respondents' inventory.

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[80] See *rollo*, Vol. I, pp. 626-627, 631-632, 637-637A, 641-642, and 646-647.

[81] See *Convoy Marketing Corporation v. Albia*, G.R. No. 194969, October 7, 2015, citing *First Industrial Corporation v. Calimbas*, 713 Phil. 608, 621-622 (2013).

[82] See *Mitsubishi Motors Phils. Corp. v. Chrysler Philippines Labor Union*, 477 Phil. 241, 258 (2004).

[83] See *rollo*, Vol. I, pp. 643 and 648.

[84] See *id*. at 326-327.

[85] See *id*. at 325.

All told, the respondents failed to prove by substantial evidence that petitioners were the authors of or at least participated in the alleged pilferage of the "Brazilian Blowout" products. Unlike respondents' two (2) former employees, namely, Romar Geroleo and Cipriano Layco, who were caught red-handed in an entrapment operation, no direct evidence showing petitioners' guilt was presented and respondents relied on *inconclusive* circumstantial evidence in determining who the perpetrators of the pilferage are. While proof beyond reasonable doubt is not required in dismissing an employee, the employer must *prove by substantial evidence the facts and incidents* upon which the accusations are made.[86] Unsubstantiated suspicions, accusations, and conclusions of the employer, as in this case, are not enough to justify an employee's dismissal.[87]

It bears emphasis that to justify the grant of the extraordinary remedy of *certiorari*, it must be satisfactorily shown that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[88] Measured against these parameters, the Court finds that the CA committed reversible error in granting respondents' *certiorari* petition since the NLRC did not gravely abuse its discretion in finding petitioners to have been illegally dismissed. The NLRC's ruling cannot be equated to a capricious and whimsical exercise of judgment since its pronouncement of illegal dismissal squares with existing legal principles and is supported by the records of the case.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 5, 2014 and the Resolution dated September 10,

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[86] *Landtex Industries v. CA*, 556 Phil. 466, 487 (2007).

[87] *Id*.

[88] See *Baron v. EPE Transport, Inc.*, *supra* note 60.

2014 of the Court of Appeals (CA) in CA-G.R. SP No. 133299 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated October 31, 2013 and the Resolution dated November 27, 2013 of the National Labor Relations Commission in NLRC LAC No. 09-00513-13 are **REINSTATED**.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 216130. August 3, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **GOODYEAR PHILIPPINES, INC.**, *respondent.*

SYLLABUS

1. TAXATION; TAX CODE; SECTION 229 ON CLAIM FOR REFUND; RULE THAT JUDICIAL CLAIM MUST BE FILED WITHIN TWO (2) YEARS FROM DATE OF PAYMENT OF TAX PROVIDED AN ADMINISTRATIVE CLAIM HAS BEEN DULY FILED; TAXPAYER NEED NOT WAIT FOR RESOLUTION OF ADMINISTRATIVE CLAIM BEFORE FILING JUDICIAL CLAIM.— Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR) x x x Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected

erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code — [then Section 306 of the old Tax Code] — however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.

2. ID.; RP-US TAX TREATY; GOVERNS THE TAX IMPLICATIONS OF TRANSACTIONS WITH GOODYEAR TIRE AND RUBBER COMPANY (GTRC), A US RESIDENT CORPORATION; REDEMPTION PRICE RECEIVED BY GTRC COULD NOT BE TREATED AS ACCUMULATED DIVIDENDS IN ARREARS THAT COULD BE SUBJECTED TO 15% FINAL WITHOLDING TAX (FWT) UNDER THE TAX CODE .— [P]etitioner asserts that the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares should be subject to 15% FWT on dividends. x x x [That] the component of the redemption price representing the amount of ₱97,732,314.00 should not be treated as a mere premium and part of the subscription price, but as accumulated dividend in arrears, and, hence, subject to 15% FWT. [T]he assertions are wrong. The imposition of 15% final withholding tax (FWT) on intercorporate dividends received by a non-resident foreign corporation is found in Section 28 (B) (5) (b) of the Tax Code x x x [But] Goodyear Tire and Rubber Company (GTRC) is a non-resident foreign corporation, specifically a resident of the US. [P]ursuant to the cardinal principle that treaties have the force and effect of law in this jurisdiction, the RP-US Tax Treaty complementarily governs the tax implications of respondent's transactions with GTRC. Under Article 11 (5) of the RP-US Tax Treaty, the term "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident, which, in this case, pertains to respondent, a resident of the Philippines. Accordingly, attention should be drawn to the statutory definition of what constitutes "dividends," pursuant to Section 73 (A) of the Tax Code which provides that "**[t]he term 'dividends'** x x x **means any distribution made by a corporation to its shareholders out of its earnings or profits** and payable to its shareholders, whether in money or in other property." In light of the foregoing, the Court therefore holds that the redemption price representing the amount of

> ₱97,732,314.00 received by GTRC could not be treated as accumulated dividends in arrears that could be subjected to 15% FWT. Verily, respondent's Audited Financial Statements (AFS) covering the years 2003 to 2009 show that it did not have unrestricted retained earnings, and in fact, operated from a position of deficit. **Thus, absent the availability of unrestricted retained earnings, the board of directors of respondent had no power to issue dividends.** Consistent with Section 73 (A) of the Tax Code, this rule on dividend declaration — *i.e.*, that it is dependent upon the availability of unrestricted retained earnings — was further edified in Section 43 of The Corporation Code of the Philippines x x x It is also worth mentioning that one of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock which, however, does not obtain in this case. As aptly pointed out by the CTA *En Banc*, the amount of ₱97,732,314.00 received by GTRC did not represent a periodic distribution of dividend, but rather a payment by respondent for the redemption of GTRC's 3,729,216 preferred shares.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Follosco Morallos & Herce for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 14, 2014 and the Resolution[3] dated

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[1] *Rollo*, pp. 9-23.

[2] *Id.* at 25-52. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring.

[3] *Id.* at 53-56. Penned by Associate Justice Esperanza R. Fabon-Victorino with Presiding Justice Roman G. Del Rosario and Associate Justices Juanito

January 5, 2015 of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 1041, which affirmed the Decision[4] dated March 25, 2013 and the Resolution[5] dated June 26, 2013 of the CTA Second Division (CTA Division) in C.T.A. Case No. 8188, ordering petitioner Commissioner of Internal Revenue (petitioner) to refund or issue a tax credit certificate (TCC) in the sum of ₱14,659,847.10 to respondent Goodyear Philippines, Inc. (respondent), representing erroneously withheld and remitted final withholding tax (FWT).

The Facts

Respondent is a domestic corporation duly organized and existing under the laws of the Philippines, and registered with the Bureau of Internal Revenue (BIR) as a large taxpayer with Taxpayer Identification Number 000-409-561-000.[6] On August 19, 2003, the authorized capital stock of respondent was increased from ₱400,000,000.00 divided into ₱4,000,000 shares with a par value of ₱100.00 each, to ₱1,731,863,000.00 divided into 4,000,000 common shares and 13,318,630 preferred shares with a par value of ₱100.00 each. Consequently, all the preferred shares were solely and exclusively subscribed by Goodyear Tire and Rubber Company (GTRC), which was a foreign company organized and existing under the laws of the State of Ohio, United States of America (US) and is unregistered in the Philippines.[7]

On May 30, 2008, the Board of Directors of respondent authorized the redemption of GTRC's 3,729,216 preferred shares

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C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring.

[4] *Id*. at 63-104. Penned by Associate Justice Cielito N. Mindaro-Grulla with Associate Justices Juanito C. Castañeda, Jr. and Caesar A. Casanova concurring.

[5] Resolved by the CTA Special Second Division. *Id*. at 105-107.

[6] *Id*. at 63-64.

[7] *Id*. at 64.

on October 15, 2008 at the redemption price of ₱470,653,914.00, broken down as follows: ₱372,921,600.00 representing the aggregate par value and ₱97,732,314.00, representing accrued and unpaid dividends.[8]

On October 15, 2008, respondent filed an application for relief from double taxation before the International Tax Affairs Division of the BIR to confirm that the redemption was not subject to Philippine income tax, pursuant to the Republic of the Philippines (RP) – US Tax Treaty.[9] This notwithstanding, respondent still took the conservative approach, and thus, withheld and remitted the sum of ₱14,659,847.10 to the BIR **on November 3, 2008**, representing fifteen percent (15%) FWT, computed based on the difference of the redemption price and aggregate par value of the shares.[10]

On October 21, 2010, respondent filed an administrative claim for refund or issuance of TCC, representing 15% FWT in the sum of ₱14,659,847.10 before the BIR. Thereafter, or **on November 3, 2010**, it filed a judicial claim, by way of petition for review, before the CTA, docketed as C.T.A. Case No. 8188.[11]

For her part, petitioner maintained that respondent's claim must be denied, considering that: (*a*) it failed to exhaust administrative remedies by prematurely filing its petition before the CTA; and (*b*) it failed to submit complete supporting documents before the BIR.[12]

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

[9] Entitled "CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA WITH RESPECT TO TAXES ON INCOME," which entered into force on October 16, 1982.

[10] *Rollo*, p. 65.

[11] *Id*. at 84-85.

[12] *Id*. at 28 and 66-70.

The CTA Division Ruling

In a Decision[13] dated March 25, 2013, the CTA Division granted the petition and thereby ordered petitioner to refund or issue a TCC in the sum of ₱14,659,847.10 to respondent for being erroneously withheld and remitted as FWT.[14] Concerning the procedural issue, the CTA Division ruled that it was appropriate for respondent to dispense with the administrative remedy before the BIR, considering that court action should be instituted within two (2) years after the payment of the tax regardless of the pendency of the administrative claim; otherwise, the taxpayer would be barred from recovering the same.[15]

On the merits, the CTA Division found that the redemption of the 3,729,216 shares issued to GTRC – which were then converted to treasury shares – was **not** subject to Philippine income tax. The CTA Division elucidated that while the general rule is that the net capital gain obtained by a non-resident foreign corporation, such as GTRC, in the redemption of shares would be subjected to tax rates of five percent (5%) and ten percent (10%) under Section 28 (B) (5) (c)[16] of the National Internal

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[13] *Id.* at 63-104.

[14] *Id.* at 103-104.

[15] *Id.* at 87-88.

[16] SEC. 28. **Rates of Income Tax on Foreign Corporations. –**

x x x x x x x x x

(B) *Tax on Nonresident Foreign Corporation*. –

x x x x x x x x x

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.*–

x x x x x x x x x

(c) *Capital Gains from Sale of Shares of Stock not Traded in the Stock Exchange.* – A final tax at the rates prescribed below is hereby imposed upon the net capital gains realized during the taxable year from the sale, barter, exchange or other disposition of shares of stock in a domestic corporation, except shares sold, or disposed of through the stock exchange:

Revenue Code, as amended (Tax Code), the provisions, however, of the RP-US Tax Treaty would also apply in determining the tax implications of the redemption of GTRC's preferred shares because it is a resident of the US.[17] It pointed out that under Article 14[18] of the RP-US Tax Treaty, any gain derived by a US resident (*i.e.*, GTRC) from the alienation of its properties (*i.e.*, the preferred shares), other than those described in paragraph 1 thereof, shall only be taxable in the US. Nonetheless, the CTA Division remained mindful of the Reservation Clause[19] in the same treaty which provided that the gains derived by a US resident from the disposition of shares in a domestic corporation may be taxed in the Philippines, provided that the

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Not over ₱100,000..... 5%
On any amount in excess of ₱100,000..... 10%

(See also *id.* at 93-94.)

[17] *Id.* at 94.

[18] Article 14 of the RP-US Tax Treaty states:

Article 14
CAPITAL GAINS

1. Gains from the alienation of tangible personal (movable) property forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or of tangible personal (movable) property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships, aircraft or containers operated by such resident in international traffic shall be taxable only in that State, and gains described in Article 13 (Royalties) shall be taxable only in accordance with the provisions of Article 13 (Royalties).

2. Gains from the alienation of any property other than those mentioned in paragraph 1 or in Article 7 Income from Real Property) shall be taxable only in the Contracting State of which the alienator is a resident. (See also *id.* at 94.)

[19] *Id.* at 95.

latter's assets **principally**[20] consist of real property. After evaluating the Audited Financial Statements (AFS) of respondent for the years 2007 and 2008, and noting that the value of its real properties – *i.e.*, property, plant, and equipment – comprise less than 50% of its total assets, the CTA Division held that respondent's assets did not principally consist of real property and, hence, exempt from capital gains tax under Section 28 (B) (5) (c) of the Tax Code.[21]

The CTA Division then determined whether the net capital gain derived by GTRC would be subjected to 15% FWT imposed on intercorporate dividends under Section 28 (B) (5) (b)[22] of the Tax Code. Citing the RP-US Tax Treaty, the CTA Division noted that dividend income shall be determined by the law of the state in which the distributing corporation is a resident,[23] which in the Philippines' case, would be Section 73 (A)[24] of the Tax Code, defining dividends for income tax purposes as

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[20] "Principally" means more than 50% of the entire assets in terms of value. See *id.* at 96.

[21] *Id.* at 91-97.

[22] (b) *Intercorporate Dividends*. – A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57 (A) of this Code, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: Provided, that effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends; (See also *id.* at 97-98)

[23] *Id.* at 98.

[24] SEC. 73. *Distribution of Dividends or Assets by Corporations*. –

(A) *Definition of Dividends*. – The term "*dividends*" when used in this Title means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property.

distributions to shareholders arising out of its earnings or profits. Accordingly, the CTA Division held that the net capital gain of GTRC could not be regarded as "dividends," considering that it did not come from respondent's unrestricted earnings or profits, as the records would show that it did not have any unrestricted earnings from the years 2003-2009 to cover any dividend pay-outs.[25] Finally, the CTA Division explained that there is only one instance in the Tax Code which treated the gains derived from redemptions or buy back of shares as dividends, and this is found in Section 73 (B),[26] which contemplated the issuance of stock dividends. The CTA Division, however, dispelled the application of this provision, considering that the shares which respondent redeemed were neither stock dividends nor were they redeemed using unrestricted retained earnings. In sum, the CTA Division ruled that absent any law which specifically treats the gain derived by GTRC as dividends, the same could not be subjected to 15% FWT under Section 28 (B) (5) (b).[27]

Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be.

(See also *id*. at 99.)

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

[26] SEC. 73. *Distribution of Dividends or Assets by Corporations*. –

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(B) *Stock Dividend*. – A stock dividend representing the transfer of surplus to capital account shall not be subject to tax. However, if a corporation cancels or redeems stock issued as a dividend at such time and in such manner as to make the distribution and cancellation or redemption, in whole or in part, essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be considered as taxable income to the extent that it represents a distribution of earnings or profits.

(See also *id*. at 101.)

[27] *Id*. at 101-102.

Dissatisfied, petitioner moved for reconsideration,[28] which was, however, denied in a Resolution[29] dated June 26, 2013. Thereafter, she appealed[30] to the CTA *En Banc*.

The CTA *En Banc* Ruling

In a Decision[31] dated August 14, 2014, the CTA *En Banc* affirmed the findings of the CTA Division. Echoing the ruling of the CTA Division, the CTA *En Banc* found that respondent was compelled to seek judicial recourse after thirteen (13) days from filing its administrative claim so as not to forfeit its right to appeal to the CTA. Anent the tax treatment of the redemption price paid by respondent to GTRC, the CTA *En Banc* fully agreed with the disposition of the CTA Division, ruling that the net capital gain received by GTRC was not subject to Philippine income tax.[32]

Undaunted, petitioner filed a motion for reconsideration,[33] which was, however, denied in a Resolution[34] dated January 5, 2015; hence, this petition.

The Issues Before the Court

The issues raised by petitioner in this case are: (*a*) whether or not the judicial claim of respondent should be dismissed for non-exhaustion of administrative remedies; and (*b*) whether or not the CTA *En Banc* correctly ruled that the gain derived by GTRC was not subject to 15% FWT on dividends.

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[28] Not attached to the *rollo*.

[29] *Rollo*, pp. 105-107.

[30] Not attached to the *rollo*.

[31] *Rollo*, pp. 25-52.

[32] *Id.* at 35-50.

[33] Not attached to the *rollo*.

[34] *Rollo*, pp. 53-56.

The Court's Ruling

The petition is devoid of merit.

I.

At the onset, petitioner contends that by filing the administrative and judicial claims only 13 days apart, respondent, in effect, pursued an empty remedy before the BIR, and thereby deprived the latter of the opportunity to ascertain the validity of the claim. In this regard, petitioner maintained that the mere filing of the administrative claim before the BIR did not outrightly satisfy the requirement of exhaustion of administrative remedy.[35]

The contentions are untenable.

Section 229 of the Tax Code states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the Commissioner of Internal Revenue (CIR), *viz.*:

> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – **No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously** or illegally assessed or **collected**, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, **until a claim for refund or credit has been duly filed with the Commissioner**; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment** x x x. (Emphases and underscoring supplied)

Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action

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[35] *Id.* at 17.

would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. To clarify, Section 229 of the Tax Code – [then Section 306 of the old Tax Code] – however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed. In *CBK Power Company, Ltd. v. CIR*,[36] the Court enunciated:

> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener)*, wherein it was held that in **no wise does the law**, *i.e.*, Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action**. In *Kiener,* the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** x x x.[37] (Emphases and underscoring supplied)

In the case at bar, records show that both the administrative and judicial claims for refund of respondent for its erroneous withholding and remittance of FWT were indubitably filed within the two-year prescriptive period.[38] Notably, Section 229 of the Tax Code, as worded, only required that an administrative claim should first be filed. It bears stressing that respondent could not be faulted for resorting to court action, considering that the prescriptive period stated therein was about to expire. Had respondent awaited the action of petitioner knowing fully well that the prescriptive period was about to lapse, it would have resultantly forfeited its right to seek a judicial review of its claim, thereby suffering irreparable damage.

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[36] G.R. Nos. 193383-84 & 193407-08, January 14, 2015, 746 SCRA 93.

[37] *Id.* at 110-111; citation omitted.

[38] Date of payment was November 3, 2008, while the administrative and judicial claims were respectively filed on October 21, 2010 and November 3, 2010. *Rollo*, pp. 27-28.

Thus, in view of the aforesaid circumstances, respondent correctly and timely sought judicial redress, notwithstanding that its administrative and judicial claims were filed only 13 days apart.

II.

For another, petitioner asserts that the net capital gain derived by GTRC from the redemption of its 3,729,216 preferred shares should be subject to 15% FWT on dividends. She claims that while the payment of the original subscription price could not be taxed as it represented a return of capital, the additional amount, however, or the component of the redemption price representing the amount of ₱97,732,314.00 should not be treated as a mere premium and part of the subscription price, but as accumulated dividend in arrears, and, hence, subject to 15% FWT.[39]

Again, the assertions are wrong.

The imposition of 15% FWT on intercorporate dividends received by a non-resident foreign corporation is found in Section 28 (B) (5) (b) of the Tax Code which reads:

SEC. 28. *Rates of Income Tax on Foreign Corporations.* –

x x x x x x x x x

(B) *Tax on Nonresident Foreign Corporation.* –

x x x x x x x x x

(5) *Tax on Certain Incomes Received by a Nonresident Foreign Corporation.* –

(b) *Intercorporate Dividends.* – **A final withholding tax at the rate of fifteen percent (15%) is hereby imposed on the amount of cash and/or property dividends received from a domestic corporation, which shall be collected and paid as provided in Section 57 (A) of this Code**, subject to the condition that the country in which the nonresident foreign corporation is domiciled, shall allow

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

a credit against the tax due from the nonresident foreign corporation taxes deemed to have been paid in the Philippines equivalent to twenty percent (20%), which represents the difference between the regular income tax of thirty-five percent (35%) and the fifteen percent (15%) tax on dividends as provided in this subparagraph: *Provided*, That effective January 1, 2009, the credit against the tax due shall be equivalent to fifteen percent (15%), which represents the difference between the regular income tax of thirty percent (30%) and the fifteen percent (15%) tax on dividends;

x x x x x x x x x

(Emphasis and underscoring supplied)

It must be noted, however, that GTRC is a non-resident foreign corporation, specifically a resident of the US. Thus, pursuant to the cardinal principle that treaties have the force and effect of law in this jurisdiction,[40] the RP-US Tax Treaty complementarily governs the tax implications of respondent's transactions with GTRC.

Under Article 11 (5)[41] of the RP-US Tax Treaty, the term "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident, which, in this case, pertains to respondent, a resident of the Philippines. Accordingly, attention should be drawn to the statutory definition of what constitutes "dividends," pursuant to Section 73 (A)[42] of the Tax Code which provides that "**[t]he**

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[40] *Deutsche Bank AG Manila Branch v. CIR,* 716 Phil. 676, 686 (2013).

[41] Article 11 (5) of the RP-US Tax Treaty reads:

Article 11
Dividends

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5. The term "dividends" as used in this Convention means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the State of which the corporation making the distribution is a resident. (See *id*. at 98.)

[42] Section 73 (A) of the Tax Code states:

SEC. 73. *Distribution of Dividends or Assets by Corporations*.–

term 'dividends' x x x **means any distribution made by a corporation to its shareholders out of its earnings or profits** and payable to its shareholders, whether in money or in other property."

In light of the foregoing, the Court therefore holds that the redemption price representing the amount of ₱97,732,314.00 received by GTRC could not be treated as accumulated dividends in arrears that could be subjected to 15% FWT. Verily, respondent's AFS covering the years 2003 to 2009 show that it did not have unrestricted retained earnings, and in fact, operated from a position of deficit.[43] **Thus, absent the availability of unrestricted retained earnings, the board of directors of respondent had no power to issue dividends**.[44] Consistent with Section 73 (A) of the Tax Code, this rule on dividend declaration – *i.e.,* that it is dependent upon the availability of unrestricted retained earnings – was further edified in Section 43 of The Corporation Code of the Philippines[45] which reads:

Section 43. *Power to Declare Dividends.* — **The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them:** *Provided*, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from

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(A) *Definition of Dividends*. – **The term "dividends"** when used in this Title **means any distribution made by a corporation to its shareholders out of its earnings or profits and payable to its shareholders, whether in money or in other property.**

Where a corporation distributes all of its assets in complete liquidation or dissolution, the gain realized or loss sustained by the stockholder, whether individual or corporate, is a taxable income or a deductible loss, as the case may be. (Emphases and underscoring supplied)

[43] *Rollo*, p. 118.

[44] See *Crucillo v. Office of the Ombudsman,* 552 Phil. 699, 624 (2007)*;* and *Republic Planters Bank v. Agana, Sr.*, 336 Phil. 1, 9-11 (1997).

[45] Batas Pambansa Bilang 68 (May 1, 1980).

the delinquent stockholder until his unpaid subscription is fully paid: *Provided*, *further*, That no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.

x x x x x x x x x

(Emphasis and underscoring supplied)

It is also worth mentioning that one of the primary features of an ordinary dividend is that the distribution should be in the nature of a recurring return on stock[46] which, however, does not obtain in this case. As aptly pointed out by the CTA *En Banc*, the amount of ₱97,732,314.00 received by GTRC did not represent a periodic distribution of dividend, but rather a payment by respondent for the redemption[47] of GTRC's 3,729,216 preferred shares. In *Wise & Co., Inc. v. Meer*:[48]

> **The amounts thus distributed among the plaintiffs were not in the nature of a recurring return on stock — in fact, they surrendered and relinquished their stock in return for said distributions**, thus ceasing to be stockholders of the Hongkong Company, which in turn ceased to exist in its own right as a going concern during its more or less brief administration of the business *as trustee* for the Manila Company, and finally disappeared even as such trustee.
>
> "The distinction between a distribution in liquidation and an ordinary dividend is *factual*; the result in each case depending on the *particular circumstances of the case and the intent of the parties*. **If the distribution is in the nature of a recurring return on stock it is an ordinary dividend. However, if the corporation is really *winding up its business* or recapitalizing and narrowing its activities, the distribution may properly**

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[46] See *Wise & Co., Inc. v. Meer*, 78 Phil. 655 (1947).

[47] "Redemption is repurchase, a reacquisition of stock by a corporation which issued the stock in exchange for property, whether or not the acquired stock is cancelled, retired or held in the treasury." (*CIR v. Court of Appeals*, 361 Phil. 103, 124 (1999); citations omitted.)

[48] *Supra* note 46.

> **be treated as in complete or partial liquidation and as payment by the corporation to the stockholder for his stock.** The corporation is, in the latter instances, wiping out all parts of the stockholders' interest in the company * * * ." (Montgomery, Federal Income Tax Handbook [1938-1939], 258 x x x)[49] (Emphases and underscoring supplied)

All told, the amount of ₱97,732,314.00 received by GTRC from respondent for the redemption of its 3,729,216 preferred shares were not accumulated dividends in arrears. Contrary to petitioner's claims, it is therefore not subject to 15% FWT on dividends in accordance with Section 28 (B) (5) (b) of the Tax Code.

WHEREFORE, the petition is **DENIED**. The Decision dated August 14, 2014 and the Resolution dated January 5, 2015 of the Court of Tax Appeals *En Banc* in C.T.A. EB No. 1041 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*), *Bersamin, Jardeleza,*[*] and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218809. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALLAN EGAGAMAO**, *accused-appellant.*

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[49] *Id*. at 669.

[*] Designated as Additional Member per Raffle dated July 25, 2016.

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; DEATH OF THE ACCUSED PENDING APPEAL OF CONVICTION; EFFECTS ON HIS LIABILITY.— Before the Court is an ordinary appeal filed by accused-appellant Allan Egagamao assailing the decision of the Court of Appeals which affirmed the decision of the Regional Trial Court finding Egagamao guilty of Rape. Egagamao, however, died on September 17, 2013. In view thereof, the criminal case against Egagamao, including the instant appeal, is hereby dismissed. Under Article 89 (1) of the RPC, x x x Criminal liability is totally extinguished [b]y 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. Bayotas*, the Court eloquently summed up the effects of the death of an accused pending appeal on his liabilities, as follows: 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*." 2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission: a) Law b) Contracts c) Quasi-contracts d) x x x e) Quasi-delicts 3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above. 4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In

such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Allan Egagamao (Egagamao) assailing the Decision[2] dated April 30, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01038-MIN, which affirmed the Decision[3] dated March 22, 2012 of the Regional Trial Court of Panabo City, Davao del Norte, Branch 4 (RTC) in Criminal Case Nos. 181-2004 to 184-2004 finding Egagamao guilty beyond reasonable doubt of one (1) count of the crime of Rape defined and penalized under Article 266-A (1) (a) of the Revised Penal Code (RPC), as amended by Republic Act No. (RA) 8353,[4] otherwise known as "The Anti-Rape Law of 1997."

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[1] See Notice of Appeal dated May 12, 2015; *rollo*, pp. 11-13.

[2] *Id*. at 3-10. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos concurring.

[3] CA *rollo*, pp. 32-49. Penned by Presiding Judge Dorothy P. Montejo-Gonzaga.

[4] Entitled "AN ACT EXPANDING THE DEFINITION OF THE CRIME OF RAPE, RECLASSIFYING THE SAME AS A CRIME AGAINST PERSONS, AMENDING FOR THE PURPOSE ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE, AND FOR OTHER PURPOSES," approved on September 30, 1997.

The Facts

On July 26, 2004, a total of four (4) Informations were filed before the RTC, each charging Egagamao of the crime of Rape defined and penalized under Article 266-A (1) (a) of the RPC, *viz.*:[5]

CRIMINAL CASE NO. 181-2004

That on or about August 22, 2002, in Moncado Village, Penaplata, Samal District, Island Garden City of Samal, Philippines, and within the jurisdiction of this Honorable Court said accused using physical force and intimidation, threatening to kill complainant (AAA) and her family did then and there willfully, unlawfully and feloniously had carnal knowledge of said sixteen year old minor (AAA) against her will.

CONTRARY TO LAW.

CRIMINAL CASE NO. 182-2004

That on or about November 2002, in Moncado Village, Penaplata, Samal District, Island Garden City of Samal, Philippines, and within the jurisdiction of this Honorable Court said accused using physical force and intimidation, did then and there willfully, unlawfully and feloniously had carnal knowledge of said sixteen year old minor (AAA) against her will.

CONTRARY TO LAW.

CRIMINAL CASE NO. 183-2004

That on or about January 2004, in Moncado Village, Penaplata, Samal District, Island Garden City of Samal, Philippines, and within the jurisdiction of this Honorable Court said accused using physical force and intimidation, threatening to kill complainant (AAA) and her family did then and there willfully, unlawfully and feloniously had carnal knowledge of said sixteen year old minor (AAA) against her will.

CONTRARY TO LAW.

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[5] See CA *rollo*, pp. 32-33.

CRIMINAL CASE NO. 184-2004

That on or about May 27, 2004, in Moncado Village, Penaplata, Samal District, Island Garden City of Samal, Philippines, and within the jurisdiction of this Honorable Court said accused using physical force and intimidation, threatening to kill complainant (AAA) and her family did then and there willfully, unlawfully and feloniously had carnal knowledge of said sixteen year old minor (AAA) against her will.

CONTRARY TO LAW.

The prosecution alleged that AAA,[6] a 14-year old minor, used to live at the basement of her mother's two-storey house in Samal with her elder sister's family. As AAA's elder sister works in Davao City, she is usually left at home in the house with her sister's children and husband, Egagamao. On August 22, 2002, AAA was sleeping in her room when she was awakened as Egagamao went inside her room, wearing only his underwear. AAA asked why Egagamao was in her room, but the latter simply told her not to make any noise, and thereafter started kissing her lips and cheeks and touching her body. AAA resisted and struggled but Egagamao pinned her hands, boxed her legs, and covered her mouth. He then removed both their underwears, inserted his penis into AAA's vagina, and did push and pull movements. After satisfying his lust, Egagamao threatened AAA that he would kill her and her family if she told anyone what

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[6] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence Against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013].)

just happened.[7] According to AAA, Egagamao went on to have carnal knowledge of her without her consent in November 2002, January 2004, and May 2004, and each time, he would repeat his threats of bodily harm to AAA and her family should she reveal the rape incidents.[8] In June 2004, AAA finally had the courage to tell her ordeal to her mother, who in turn, reported the incidents to the police and had AAA undergo medical examination at a health center.[9]

In his defense, Egagamao denied the charges against him, maintaining that he did not force himself upon AAA as she consented to have sexual intercourse with him. He averred that their relationship started when he started giving her allowance and other provisions whenever needed and that it was AAA herself who made sexually inviting remarks when they first made love. He added that upon learning of the complaint against him, he voluntarily surrendered to the police.[10]

The RTC Ruling

In a Decision[11] dated March 22, 2012, the RTC found Egagamao guilty beyond reasonable doubt of the crime of one (1) count of Rape committed in Criminal Case No. 181-2004 and, accordingly, sentenced him to suffer the penalty of *reclusion perpetua*, without eligibility for parole, and ordered him to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.[12] Egagamao, however, was acquitted of the three (3) other charges against him for insufficiency of evidence.[13]

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[7] See *rollo*, p. 4.

[8] See *id*. at 4-5.

[9] See *id*. at 5.

[10] See *id*.

[11] CA *rollo*, pp. 32-49.

[12] See *id*. at 48-49.

[13] See *id*. at 45 and 49.

The RTC found AAA's testimony regarding the August 22, 2002 incident to be credible and convincing as she was able to give a straightforward narration on how Egagamao succeeded in having carnal knowledge of her without her consent. On the other hand, the RTC did not give credence to Egagamao's "sweetheart theory" defense due to his failure to adduce even a single proof to sustain such defense. Further, the RTC appreciated the aggravating/qualifying circumstance of minority and relationship against Egagamao, opining that while the same was not alleged in the information, Egagamao himself admitted AAA's minority, as well as the fact that he is her brother-in-law.[14] Despite such finding, it appears, however, that the RTC convicted Egagamao of Simple Rape only, and not Qualified Rape.[15]

Aggrieved, Egagamao appealed[16] to the CA.

The CA Ruling

In a Decision[17] dated April 30, 2015, the CA affirmed the RTC ruling *in toto*.[18] Agreeing with the findings of the RTC, the CA held that the prosecution had established through AAA's straightforward and credible testimony the fact that Egagamao had carnal knowledge of her against her will.[19]

Hence, the instant appeal.

The Issue Before the Court

The core issue for the Court's resolution is whether or not Egagamao is guilty beyond reasonable doubt of committing one (1) count of Rape.

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[14] See *id*. at 37-48.

[15] See *id*. at 48-49.

[16] See Notice of Appeal dated April 24, 2012; *id*. at 9.

[17] *Rollo*, pp. 3-10.

[18] *Id*. at 9.

[19] See *id*. at 7-9.

The Court's Ruling

At the outset, it appears from the records that in a letter[20] dated January 27, 2016, Davao Prison and Penal Farm Acting Superintendent Gerardo F. Padilla informed the Court that Egagamao had already died on September 17, 2013 due to Cardiopulmonary Arrest secondary to Acute Myocardial Infarction, attaching thereto a duplicate copy of Egagamao's Certificate of Death[21] issued by the Municipal Civil Registrar of B.E. Dujali, Davao del Norte.

In view of the foregoing, the criminal case against Egagamao, including the instant appeal, is hereby dismissed.

Under Article 89 (1) of the RPC, the consequences of Egagamao's death are as follows:

> 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. Bayotas*,[22] the Court eloquently summed up the effects of the death of an accused pending appeal on his liabilities, as follows:

> From this lengthy disquisition, we summarize our ruling herein:
>
> 1. Death of the accused pending appeal of his conviction extinguishes his criminal liability[,] as well as the civil liability[,] based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto* in *senso strictiore*."

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[20] *Id.* at 27.

[21] *Id.* at 28.

[22] G.R. No. 102007, September 2, 1994, 236 SCRA 239.

2. Corollarily, the claim for civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict. Article 1157 of the Civil Code enumerates these other sources of obligation from which the civil liability may arise as a result of the same act or omission:

a) Law
b) Contracts
c) Quasi-contracts
d) x x x
e) Quasi-delicts

3. Where the civil liability survives, as explained in Number 2 above, an action for recovery therefor may be pursued but only by way of filing a separate civil action and subject to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator or the estate of the accused, depending on the source of obligation upon which the same is based as explained above.

4. Finally, the private offended party need not fear a forfeiture of his right to file this separate civil action by prescription, in cases where during the prosecution of the criminal action and prior to its extinction, the private-offended party instituted together therewith the civil action. In such case, the statute of limitations on the civil liability is deemed interrupted during the pendency of the criminal case, conformably with provisions of Article 1155 of the Civil Code, that should thereby avoid any apprehension on a possible privation of right by prescription.[23]

Thus, upon Egagamao's death pending appeal of his conviction, the criminal action is extinguished inasmuch as there is no longer a defendant to stand as the accused; the civil action instituted therein for the recovery of civil liability *ex delicto* is *ipso facto* extinguished, grounded as it is on the criminal action.[24] However, it is well to clarify that Egagamao's civil liability in connection with his acts against AAA may be based on sources

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[23] *Id*. at 255-256; citations omitted.

[24] *People v. Paras*, G.R. No. 192912, October 22, 2014, 739 SCRA 179, 184.

of obligation other than delicts; in which case, AAA may file a separate civil action against the estate of Egagamao, as may be warranted by law and procedural rules.[25]

WHEREFORE, the Court resolves to: (*a*) **SET ASIDE** the appealed Decision dated April 30, 2015 of the Court of Appeals in CA-G.R. CR HC No. 01038-MIN; (*b*) **DISMISS** Criminal Case No. 181-2004 before the Regional Trial Court of Panabo City, Davao del Norte, Branch 4 by reason of the death of accused-appellant Allan Egagamao; and (*c*) **DECLARE** the instant case **CLOSED** and **TERMINATED**. No costs.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro, Bersamin,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 219783. August 3, 2016]

SPOUSES ERNESTO TATLONGHARI and EUGENIA TATLONGHARI, *petitioners, vs.* **BANGKO KABAYAN-IBAAN RURAL BANK, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; RULE ON AMENDMENT OF PLEADINGS TREATED WITH LIBERALITY, ESPECIALLY WHEN FILED AT LEAST BEFORE TRIAL.— Our rules of procedure allow a party in a civil action to amend his pleading as a matter of

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[25] See *People v. Abungan*, 395 Phil. 456, 462 (2000).

right, so long as the pleading is amended only once and before a responsive pleading is served (or, if the pleading sought to be amended is a reply, within ten days after it is served). Otherwise, a party can only amend his pleading upon prior leave of court. As a matter of judicial policy, courts are impelled to treat motions for leave to file amended pleadings with liberality. This is especially true when a motion for leave is filed during the early stages of proceedings or, at least, before trial. Jurisprudence states that *bona fide* amendments to pleadings should be allowed in the interest of justice so that every case may, so far as possible, be determined on its real facts and the multiplicity of suits thus be prevented. Hence, as long as it does not appear that the motion for leave was made with bad faith or with intent to delay the proceedings, courts are justified to grant leave and allow the filing of an amended pleading. Once a court grants leave to file an amended pleading, the same becomes binding and will not be disturbed on appeal unless it appears that the court had abused its discretion.

2. ID.; CHANGE OF ATTORNEYS; WRITTEN CONSENT OF FORMER ATTORNEY PRIOR TO HIS SUBSTITUTION IS NOT REQUIRED.— [T]here is no rule requiring the written consent of a former attorney prior to his substitution. Section 26, Rule 138 of the Rules of Court provides: x x x **In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party. A client may at any time dismiss his attorney or substitute another in his place,** x x x Nowhere in the provision is it stated that the written consent of an attorney previously engaged by a client should be obtained before substitution can be had; instead, what the rule requires is mere notice to the *adverse party.* Moreover, a client may effect substitution of attorneys *at any time* subject to certain conditions, none of which have been shown to be obtaining in the present case. Indeed, it is the client's sole prerogative whom to engage to represent their interests and prosecute the case on their behalf.

APPEARANCES OF COUNSEL

Richard S. Flores for petitioners.
Donato Javinar for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 29, 2015 and the Resolution[3] dated August 5, 2015 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 126390, finding no grave abuse of discretion on the part of the Regional Trial Court of Pallocan West, Batangas City, Branch 7 (RTC) in denying petitioners' motion for leave to file third amended complaint.

The Facts

On August 3, 2004, a certain Pedro V. Ilagan (Pedro) filed a complaint[4] for annulment of special power of attorney (SPA), promissory notes, and real estate mortgage (civil case) against respondent Bangko Kabayan-Ibaan Rural Bank, Inc. (the bank) and the Provincial Sheriff of Batangas Province (defendants) before the RTC.[5] He alleged that the Office of the Ex-Officio Sheriff of the RTC had posted and published notices of Sheriff's Sale against him as the attorney-in-fact of a certain Matilde Valdez (Valdez), married to Crispin Brual (Brual), and herein petitioners spouses Ernesto and Eugenia Tatlonghari (Sps. Tatlonghari), setting the auction sale of properties belonging respectively to the said couples allegedly for the satisfaction of Pedro's indebtedness to the bank amounting to ₱3,000,000.00.[6] Among others, Pedro denied that he obtained a loan from the

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

[2] *Id*. at 36-45. Penned by Associate Justice Ramon A. Cruz with Associate Justices Rebecca De Guia-Salvador and Marlene Gonzales-Sison concurring.

[3] *Id*. at 47-48. Penned by Associate Justice Ramon A. Cruz with Associate Justices Marlene Gonzales-Sison and Leoncia R. Dimagiba concurring.

[4] Dated August 3, 2004. *Id*. at 49-56.

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

[6] *Id*. at 50-51.

bank and that Sps. Tatlonghari or Valdez constituted him as an attorney-in-fact for the purpose of mortgaging their respective properties as collateral to the bank.[7]

After the original complaint was filed, Pedro convinced Sps. Tatlonghari to join him in the civil case against the bank. He informed them that the bank used a falsified SPA and made it appear that they had authorized him to obtain a loan from it, secured by a real estate mortgage on their property which was the subject of foreclosure proceedings.[8] As Sps. Tatlonghari did not issue any SPA or authorization in favor of Pedro, they agreed to join him as plaintiffs in the civil case against the bank and likewise accepted the offer for Pedro's counsel, Atty. Bienvenido Castillo (Atty. Castillo), to represent them.[9] On August 11, 2004, Sps. Tatlonghari and Pedro, together with Valdez and Brual, as plaintiffs, filed an amended complaint[10] (First Amended Complaint) against defendants.

On September 21, 2004, the defendants filed their answer.[11]

On July 22, 2005, Atty. Eliseo Magno Salva (Atty. Salva) of the Salva Salva & Salva Law Office entered[12] the appearance of the law firm as collaborating counsel for plaintiffs. Thereafter, plaintiffs, through Atty. Salva, filed a Manifestation and Motion for Leave to File and to Admit Second Amended Complaint[13] asserting the need to file a Second Amended Complaint for the purpose of, *inter alia*, including as additional plaintiffs Sps. Tolentino A. Sandoval (Tolentino) and Evelyn C. Sandoval (Evelyn; collectively, Sps. Sandoval), who had previously purchased the mortgaged property of Valdez. Incidentally, Valdez

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

[8] *Id*. at 37.

[9] *Id*.

[10] *Id*. at 61-69.

[11] *Id*. at 204-210.

[12] *Id*. at 74-75.

[13] *Id*. at 76-78.

and Brual had since died; thus, the Second Amended Complaint also sought to include their estate and heirs as defendants, as the latter's consent to substitute their predecessors could not be secured.[14] Additionally, Eugenia Ilagan (Eugenia), Pedro's spouse, was included as plaintiff.[15]

Subsequently, the RTC admitted the Second Amended Complaint.[16]

While the case was pending, Sps. Tatlonghari allegedly discovered evidence which led them to believe that it was Tolentino, one of their co-plaintiffs, who was responsible for involving their property in the purportedly anomalous transactions with the bank. As Attys. Castillo and Salva, the collaborating counsels of record, were both hired by Pedro and Tolentino, Sps. Tatlonghari decided to engage the services of their own counsel. Thus, on August 3, 2011, Atty. Marlito I. Villanueva (Atty. Villanueva) entered[17] his appearance as counsel for Sps. Tatlonghari.[18]

Subsequently, Atty. Villanueva filed a motion for leave to file third amended complaint[19] on behalf of Sps. Tatlonghari. In their motion, they alleged that the title to their property had already been consolidated in favor of the bank, and that the original and amended complaints contained no allegations or prayer pertaining specifically to their cause of action against the bank, which might bar them from getting complete relief in the civil case. Particularly, the Third Amended Complaint[20] fully described the property in question and stated that it was an entirely different property from the one covered by the real

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[14] *Id*. at 77-78.

[15] *Id*. at 37.

[16] *Id*.

[17] *Id*. at 111-113.

[18] *Id*. at 38.

[19] *Id*. at 117-121.

[20] *Id*. at 122-144.

estate mortgage in favor of the bank. In view thereof, Sps. Tatlonghari prayed, *inter alia*, for the reconveyance of their property, which the bank maliciously and unlawfully foreclosed and transferred in its name, and for the award of damages.[21]

The RTC Ruling

In an Order[22] dated December 5, 2011, the RTC denied Sps. Tatlonghari's motion, explaining that while it graciously allowed the second amendment of the complaint, it can no longer allow a *third* amendment in view of the delay in the adjudication of the merits of the case. Moreover, it noted that Sps. Tatlonghari's motion did not bear the signature of Atty. Salva, the current counsel of record of all the plaintiffs. Since records are bereft of evidence that Atty. Salva had withdrawn as counsel, he is still the Sps. Tatlonghari's counsel as far as the RTC was concerned, notwithstanding Atty. Villanueva's entry of appearance on behalf of Sps. Tatlonghari.[23]

Sps. Tatlonghari moved for reconsideration,[24] which was, however, denied in the Order[25] dated August 6, 2012. Thus, they elevated the matter to the CA *via* petition for *certiorari*.[26]

The CA Ruling

In a Decision[27] dated January 29, 2015, the CA found no grave abuse of discretion on the part of the RTC in denying Sps. Tatlonghari's motion, citing Section 3, Rule 10 of the Rules of Court, which states in part:

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[21] *Id*. at 38.

[22] *Id*. at 270-271. Penned by Presiding Judge Aida C. Santos.

[23] *Id*.

[24] *Id*. at 39.

[25] *Id*. at 272-274.

[26] Not attached to the *rollo*.

[27] *Rollo*, pp. 36-45.

Section 3. *Amendments by leave of court*. — Except as provided in the next preceding section, substantial amendments may be made only upon leave of court. But such leave may be refused if it appears to the court that the motion was made with intent to delay. x x x

In view thereof, it found that the RTC did not commit grave abuse of discretion when it considered inexcusable delay in denying Sps. Tatlonghari's motion for leave of court to file third amended complaint. Anent the issue of whether Atty. Villanueva had validly replaced Atty. Salva as Sps. Tatlonghari's counsel of record, the CA likewise concurred with the RTC in finding that Atty. Salva had neither been relieved nor replaced; therefore, he remains the counsel of record of Sps. Tatlonghari.[28]

Sps. Tatlonghari's motion for reconsideration[29] was denied in a Resolution[30] dated August 5, 2015; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in upholding the denial of Sps. Tatlonghari's motion for leave to file third amended complaint and in finding that there was no valid substitution of counsels of record insofar as Sps. Tatlonghari were concerned.

The Court's Ruling

The petition has merit.

Our rules of procedure allow a party in a civil action to amend his pleading as a matter of right, so long as the pleading is amended only once and before a responsive pleading is served (or, if the pleading sought to be amended is a reply, within ten days after it is served). Otherwise, a party can only amend his pleading upon prior leave of court.[31]

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[28] *Id*. at 43.

[29] Not attached to the *rollo*.

[30] *Rollo*, pp. 47-48.

[31] *Yujuico v. United Resources Asset Management, Inc.*, G.R. No. 211113, June 29, 2015, 760 SCRA 610, 620. See also Sections 2, 3, and 4, Rule 10 of the Rules of Court.

As a matter of judicial policy, courts are impelled to treat motions for leave to file amended pleadings with liberality. This is especially true when a motion for leave is filed during the early stages of proceedings or, at least, before trial. Jurisprudence states that *bona fide* amendments to pleadings should be allowed in the interest of justice so that every case may, so far as possible, be determined on its real facts and the multiplicity of suits thus be prevented. Hence, as long as it does not appear that the motion for leave was made with bad faith or with intent to delay the proceedings, courts are justified to grant leave and allow the filing of an amended pleading. Once a court grants leave to file an amended pleading, the same becomes binding and will not be disturbed on appeal unless it appears that the court had abused its discretion.[32]

In this case, Sps. Tatlonghari alleged[33] that the First and Second Amended Complaints did not contain certain material averments that were necessary to establish their own causes of action against the bank, and that it did not contain a prayer seeking the reconveyance of their property from the bank to them. Indeed, a meticulous inspection of the records reveal that other than the allegation that they did not execute any SPA in favor of Pedro authorizing him to use their property as collateral for his loan with the bank, the First and Second Amended Complaints are bereft of any material allegations pertaining to their personal involvement in the case against the bank. Although the First and Second Amended Complaints were replete with allegations with regard to the causes of action of Pedro and Sps. Sandoval, it contained nothing with respect to that of Sps. Tatlonghari. In fact, apart from the prayers seeking the declaration of nullity of the SPA that Sps. Tatlonghari allegedly executed on behalf of Pedro and the award for damages, the Second Amended

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[32] *Yujuico v. United Resources Asset Management, Inc.*, *id.* at 620-621, citing *Torres v. Tomacruz*, 49 Phil. 913, 915 (1927), *Tiu v. Philippine Bank of Communications*, 613 Phil. 56, 68 (2009), and *Quirao v. Quirao*, 460 Phil. 605, 611 (2003).

[33] See Motion for Leave to File Third Amended Complaint dated August 15, 2011, *rollo*, pp. 228-230.

Complaint did not seek any relief in favor of Sps. Tatlonghari; instead, it prayed for specific relief *only* in favor of Sps. Sandoval, who were purportedly the true and lawful owners of the property previously registered in the name of the deceased Valdez.

In view of the foregoing, it would have been more prudent on the part of the RTC, in the exercise of its discretion, to allow the amendments proffered by Sps. Tatlonghari and to admit the Third Amended Complaint. The RTC should have allowed such admission if only to prevent the circuitry of action and the unnecessary expense of filing another complaint anew. Although it is true that the RTC exercises discretion in this respect, it should have been more circumspect and liberal in the exercise of its discretion. With the admission of the Third Amended Complaint, the ultimate goal of determining the case on its real facts and affording complete relief to all the parties involved in this case would then be realized.

Moreover, it appears from the records that the inexcusable delay upon which the denial of Sps. Tatlonghari's motion was grounded was not their fault nor was the same deliberately caused. Records are bereft of evidence to show that such delay was attributable to them, or that in filing their motion, they were impelled by bad faith. Thus, while it is true that inexcusable delay would, under ordinary circumstances, justify the denial of their motion for leave to file third amended complaint, such ground does not obtain in this case. Besides, Sps. Tatlonghari's motion for leave to file third amended complaint was filed *before* the trial of the case; hence, the real controversies in this case would all have been presented with all the parties having ample time to prepare for trial.

With respect to the lack of *conforme* of Atty. Salva on the Sps. Tatlonghari's motion, there is no rule requiring the written consent of a former attorney prior to his substitution. Section 26, Rule 138 of the Rules of Court provides:

> Section 26. *Change of attorneys.* — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an

action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. **In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.**

A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

Nowhere in the foregoing provision is it stated that the written consent of an attorney previously engaged by a client should be obtained before substitution can be had; instead, what the rule requires is mere notice to the *adverse party*. Moreover, a client may effect substitution of attorneys *at any time* subject to certain conditions, none of which have been shown to be obtaining in the present case. Indeed, it is the client's — in this case, the Sps. Tatlonghari's —sole prerogative whom to engage to represent their interests and prosecute the case on their behalf, which prerogative cannot be negated or supplanted by the non-existent requirement of written consent of the previous attorney. Besides, an attorney is presumed to be properly authorized to represent any cause in which he appears.[34] As

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[34] Section 21, Rule 138 of the Rules of Court provides:

Section 21. *Authority of attorney to appear.* – An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client, but the presiding judge may, on motion of either party and on reasonable grounds therefor being shown, require any attorney who assumes the right to appear in a case to produce or prove the authority under which he appears, and to disclose, whenever pertinent to any issue, the name of the person who employed him, and may thereupon make such order as justice

such, Atty. Villanueva, who has entered his appearance on behalf of the Sps. Tatlonghari and filed their motion for leave to file third amended complaint, should be recognized as their new counsel of record who is fully authorized to act for and on their behalf.

WHEREFORE, the petition is **GRANTED**. The Decision dated January 29, 2015 and the Resolution dated August 5, 2015 rendered by the Court of Appeals in CA-G.R. SP No. 126390 are hereby **REVERSED** and **SET ASIDE**. The Regional Trial Court of Batangas City, Branch 7 is directed to **ADMIT** petitioners' third amended complaint and continue with the proceedings with utmost dispatch.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 219830. August 3, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee*, *vs*. **ROBERTO O. BATUHAN and ASHLEY PLANAS LACTURAN,** *accused-appellants*.

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ACCUSED POSITIVELY IDENTIFIED

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requires. An attorney wilfully appearing in court for a person without being employed, unless by leave of the court, may be punished for contempt as an officer of the court who has misbehaved in his official transactions.

CONSIDERING THE SUFFICIENCY OF ARTIFICIAL SOURCES OF LIGHT.— The CA correctly cited the previous rulings of this Court on the sufficiency of artificial sources of light in cases in which identification is an issue. We declared therein that any form of light — e.g., street lights or light posts — may be considered sufficient to allow the positive identification of a person's appearance for purposes of proving matters in court, so long as visibility is fairly established. In this case, the prosecution was able to prove that there were fully functioning street lights when the robbery transpired. These lights sufficiently illuminated the area during the incident and allowed private complainants to see the features of the accused-appellants.

2. **ID.; ID.; PRESUMPTION OF REGULAR PERFORMANCE OF DUTIES; PREVAILS AGAINST BARE DENIAL AND ALLEGATION OF FRAME-UP.—** This Court likewise affirms the refusal of the CA and the RTC to accord significance to the bare denials offered by the accused-appellants. Lacturan's defense of alibi, for instance, is inherently weak because it is self-serving. In fact, in *Lejano v. People*, this Court declared that the defense of alibi is a hangman's noose in the face of a positive identification made by a witness. With respect to the allegation of Batuhan that he was the victim of a frame-up, We note that the assertion remained unproven. He failed to show any indication of bad faith or ill motive on the part of the members of the *barangay tanod* and the police officers involved in this case. Hence, these public officers remain entitled to the presumption of regularity.

3. **CRIMINAL LAW; RAPE; MEDICAL REPORT NOT INDISPENSABLE TO A PROSECUTION FOR RAPE.—** [A] medical report is not indispensable to a prosecution for rape, since the credible testimony of the victim is sufficient for a conviction. In any event, the medical report submitted by Dr. Amadora was only an evidence of the injuries supposedly sustained by AAA from the sexual assault. Even without that report, rape may still be established. We emphasize that the absence of genital injury does not at all mean that a victim was not sexually assaulted.

4. **ID.; CIVIL PENALTIES; JOINT CIVIL LIABILITY ARISING FROM CRIME; LIABILITY SHOULD ONLY ARISE FROM WHATEVER WAS CHARGED.—** We agree with

> the CA that Batuhan and Lacturan cannot be ordered to jointly indemnify the aggregate damages suffered by private complainants. x x x [J]oint civil liability has been imposed only in criminal actions that were **jointly filed**. The rule does not apply to this case, in which the actions were filed separately, but **jointly tried.** It must also be emphasized that the Informations in this case charged Batuhan and Lacturan with distinct offenses committed against two different victims x x x [and] each Information enumerated the specific items allegedly stolen by the individual accused-appellants. To declare them jointly liable for the aggregate value of the items stolen would clearly violate their right to be informed of the nature and cause of the charges against them. Pursuant to our pronouncement in *People v. Ortega* that liability should only arise from whatever was charged, neither of the two accused-appellants should be made liable for any part of the crime of the other.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Notice of Appeal[1] filed by accused-appellants Roberto O. Batuhan and Ashley Planas Lacturan from the Decision[2] of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 01366.

The CA affirmed the Regional Trial Court (RTC) Decision[3] convicting Batuhan of robbery with rape and imposing upon

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[1] CA *rollo,* pp. 128-129.

[2] Decision dated 17 March 2015, penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez, *rollo,* pp. 4-24.

[3] Decision dated 29 September 2010, penned by Presiding Judge Soliver C. Peras; CA *rollo,* pp. 58-69.

him the penalty of *reclusion perpetua*.[4] It also affirmed the conviction of Lacturan, but modified his sentence to an indeterminate term of four (4) years and two (2) months, of *prision correccional* as minimum, to eight (8) years of *prision mayor* as maximum.[5] The appellate court, however, imposed individual civil liabilities upon each of the accused-appellants, instead of the joint civil liability meted out by the RTC. Hence, Batuhan was ordered to pay private complainant AAA[6] ₱2,130 as civil indemnity and ₱50,000 as moral damages. Lacturan, on the other hand, was ordered to pay the other private complainant, Melito Gabutero Bacumo, ₱2,500 as civil indemnity and ₱20,000 as moral damages.

FACTS

On 5 August 2008, Batuhan was charged with robbery with rape under the following Information:

> That on or about the 3rd day of August 2008, at about 1:30 o'clock A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and by means of violence or intimidation upon person, to wit: by poking a hunting knife at one [AAA] and at the same time declared a hold-up and ordered her to give her personal belongings, at Archbishop Reyes Ave., Brgy. Camputhaw, Cebu City, and without the consent of the latter, did then and there take, steal and carry away the following:
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> a) one (1) bag containing wallet with cash
> b) silver bracelet worth
> c) one (1) pair silver earrings worth
> d) one (1) silver ring worth

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[4] The case was docketed as RTC Case Nos. CBU-84019 and CBU-84020 before Branch 10, RTC, Cebu City.

[5] *Rollo,* p. 22.

[6] The real name of the victim is withheld pursuant to Republic Act No. 8505 or the "Rape Victim Assistance and Protection Act of 1998" and Supreme Court Administrative Circular No. 83-15 or the "Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names," 27 July 2015.

valued in all at ₱2,130.00, belonging to said [AAA], to the damage and prejudice of the latter, in the total amount aforestated and in connection therewith or on the occasion thereof, with deliberate intent, said accused, by means of threats and intimidation, did then and there sexually abuse said [AAA] by kissing her ears, touching her breast, and at the same time inserting his finger into her vagina without her consent and against her will.[7]

On the same date, Lacturan was indicted under a separate Information for the crime of robbery:

That on or about the 3rd day of August 2008, at about 1:30 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and by means of violence and intimidation upon person, to wit: by poking a hunting knife at one Melito Gabutero Bacumo and at the same time declared a hold-up and ordered him to give his personal belongings and without the consent of said Melito Gabutero and with intent to gain, did then and there take, steal, carry away one (1) Seiko wristwatch worth Php 2,500.00 to the damage and prejudice of said Melito Gabutero Bacumo, the owner thereof, in the amount aforestated.[8]

When arraigned, both accused-appellants pleaded "not guilty" to the charges of robbery with rape, and robbery, respectively.[9] Since the two cases arose from the same incident, they were jointly tried by the RTC.[10]

Version of the Prosecution

During trial, the Prosecution primarily relied on the testimonies of private complainants AAA and Bacumo, *Barangay Tanod* Mitchell Lawas (B/T Lawas), Dr. Madeline Amadora (Dr. Amadora), and Vicente Ragde (Ragde). From the combined testimonies of these witnesses, We gathered the following narration of facts:

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[7] *Rollo*, unpaginated.

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

[9] *Id*.

[10] *Id*.

On 3 August 2008, about 1:30 A.M., private complainants were waiting for a jeepney at the Ayala waiting shed on Archbishop Reyes Avenue, Cebu City.[11] A few minutes later, they were each held at knifepoint by two individuals (thereafter identified as the two accused-appellants).

Lacturan proceeded to threaten and rob Bacumo.[12] Upon finding out that Bacumo did not have a cellphone, Lacturan took the former's wristwatch, bracelet, and bag. The bag contained a pair of sunglasses, as well as the victim's ID, and uniform.[13]

Meanwhile, Batuhan dragged AAA 100 meters away from Bacumo and Lacturan. He then covered her mouth with his right hand, while poking the left side of her torso with a knife in his left hand. He kissed her neck and touched her breasts for about five (5) minutes. He also demanded that she allow him to insert his finger into her vagina, or he would stab her if she refused. This threat forced the victim to give in to his demand.[14]

Batuhan then tried to escape with the bag of AAA containing her bracelet, earrings, ring, and wallet, but she was able to seek the assistance of B/T Lawas and Ragde, who were on patrol at the area at the time. The two pursued Batuhan and were subsequently able to apprehend him and Lacturan.[15]

Version of the Defense

In his defense, Batuhan averred that around the time of the alleged criminal incident, he was walking near Ayala. There he was confronted by an angry mob of locals who were shouting, "Hold-up, hold-up!" He was allegedly attacked by the crowd and knocked unconscious. When he recovered, he found himself

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[11] *Id.* at 61.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 62.

[15] *Id.* at 60-62.

in a police station, where he was interrogated about a robbery that happened that same morning near the area where he was assaulted.

Batuhan denied that he had knowledge of, much less involvement in, the robbery incident. Although he confirmed that he was acquainted with his co-accused, Batuhan reasoned that this was only because the two of them were fellow painters in Cebu. However, he maintained that he had never met the private complainants. During the commotion, AAA allegedly mistook him for the perpetrator of the crime.[16]

Lacturan on the other hand, manifested that he was approached by two members of the *barangay tanod* while he was at his sister's house on 3 August 2008. He acceded to their request to accompany them, but was surprised when he was handcuffed along the way and taken to the police station. He was then detained with Batuhan and interrogated by police officers. He also alleged that he was hit in the abdomen by one police officer when he denied any participation in the commission of the crime.[17]

THE RTC RULING

After receiving and evaluating the evidence, the RTC declared Batuhan guilty beyond reasonable doubt of the crime of robbery with rape, which was punishable under Article 294(2)[18] of the Revised Penal Code (RPC). It also declared Lacturan guilty

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[16] *Id.* at 64.

[17] *Id.* at 63-64.

[18] Article 294 of the RPC provides, in relevant part:

Article 294. *Robbery with violence against or intimidation of persons; Penalties.* — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

x x x

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* when the robbery shall have been accompanied by rape x x x.

beyond reasonable doubt of robbery, which was punishable under Article 293[19] in relation to Article 294 of the RPC.

In its Decision,[20] the RTC explained that it had found the testimonies of the prosecution witnesses to be straightforward, spontaneous, direct, and devoid of any inconsistency.[21] In establishing the legal weight of these testimonies, it cited *People v. De Guia,*[22] and declared that "a detailed testimony, if given in a simple and straightforward manner, indicates sincerity in the narration of facts, and may not in the least be considered as concocted."

The trial court also ruled that the positive identifications made by private complainants and their co-witnesses must prevail over mere denials by the accused-appellants, considering the inherent self-serving character of the latter's defenses. It further noted that in the absence of any ill motive on the part of private complainants and the other witnesses, the presumption was that they would not prevaricate.[23]

As to Batuhan, the RTC likewise appreciated the medical findings of Dr. Amadora in concluding that the crime of rape accompanied the robbery. In her report and testimony in open court, she stated that there was a "healed transection"[24] in the vagina of AAA when the latter was examined. The doctor explained to the court that this finding was indicative of a prior forced insertion of a finger in the victim's vagina.[25]

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[19] Article 293 of the RPC states:

Art. 293. *Who are guilty of robbery*. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence or intimidation of any person, or using force upon anything shall be guilty of robbery.

[20] CA *rollo*, pp. 58-69.

[21] *Id.* at 65.

[22] *People v. de Guia y Quirino,* 345 Phil. 360 (1997).

[23] CA *rollo,* p. 65.

[24] *Id.* at 67.

[25] *Id.* at 67-68.

THE CA RULING

Before the CA, the accused-appellants argued that the prosecution failed to establish their guilt beyond reasonable doubt. In particular, they cited (a) private complainants' inability to identify them as the perpetrators of the offenses because of the poor lighting conditions at the time of the incident; and (b) the doubts created by the admission of AAA that she had intercourse with Bacumo prior to undergoing the medical examination by Dr. Amadora. The accused-appellants argued that there was therefore no legal basis for the RTC to order them to jointly indemnify complainants.

In a Decision[26] dated 17 March 2015, the CA sustained the convictions of both accused-appellants. It agreed with the trial court's assessment that the testimonies of private complainants were credible and convincing,[27] particularly with respect to their positive identification of Batuhan and Lacturan as the perpetrators of the crime.[28] Like the RTC, the appellate court accorded little weight to the denials offered by Batuhan and Lacturan. It likewise gave credence to the testimonies of private complainants that the Ayala area on Reyes Avenue was sufficiently illuminated by street lights,[29] which enabled them to identify the perpetrators of the crime without difficulty.

While the CA affirmed the conviction of the accused-appellants, it modified the penalty imposed by the RTC on Lacturan under the Indeterminate Sentence Law. The appellate court agreed with the minimum penalty provided, i.e., a sentence of 4 years and 2 months of *prision correccional;* but it declared that the maximum penalty should be 8 years of *prision mayor*, rather than the 7 years imposed by the RTC.

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[26] *Rollo*, pp. 107-127,149-169.

[27] CA *rollo,* p. 158.

[28] *Id*. at 162.

[29] *Id*. at 163-164.

The CA also disagreed with the RTC's finding that there should be joint civil liability on the part of the two accused-appellants. It held that the declaration of joint liability had no basis, because Batuhan and Lacturan were not charged as co-principals or co-conspirators, and the case was only jointly tried. Hence, any civil liability must be imposed individually based on the Information instituted against each of the accused-appellants. It likewise deleted the award of exemplary damages because of the absence of an aggravating circumstance.[30]

On 22 April 2015, Batuhan and Lacturan filed a Notice of Appeal[31] with the CA. The appeal was given due course in a Resolution dated 26 June 2015.[32]

On 19 October 2015, the Court issued a Resolution requiring the parties to submit supplemental briefs, if they so desired, within 30 days from notice. Instead, the accused-appellants and the People of the Philippines filed separate Manifestations[33] informing the Court of their decision to adopt the Briefs[34] they had filed with the CA.

ISSUES

The issues resolved by the CA are the same ones submitted to this Court:

(a) Whether the trial court erred in finding that the prosecution has proven the guilt of the accused-appellants beyond reasonable doubt

(b) Whether the trial court erred in holding accused-appellants jointly liable to pay damages

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[30] *Rollo*, p. 22.

[31] CA *rollo,* pp. 128-129.

[32] *Rollo*, pp. 28-32.

[33] Manifestation dated 3 March 2016 and 4 April 2016, *rollo* (unpaginated).

[34] See Brief for the Accused-Apellants, CA *rollo,* pp. 46-56; and Brief for the Plaintiff-Appellee, CA *rollo,* pp. 90-101.

OUR RULING

We **DENY** the appeal.

After reviewing the records of this case, the Court resolves to affirm the conviction of Batuhan for robbery with rape and of Lacturan for robbery. We also agree with the CA's modification of the RTC Decision with respect to the imposition of individual civil liability on each of the accused-appellants. However, we resolve to modify the appellate court's application of the Indeterminate Sentence Law to Lacturan.

The CA correctly ruled that the positive and coherent testimonies of the prosecution witnesses must prevail over the defenses of alibi and denial presented by the accused-appellants.

At the outset, We emphasize the general rule that this Court is bound by the concurrent findings of fact made by the RTC and the CA.[35] In this case, both lower courts found the testimonies of the prosecution witnesses credible and trustworthy. We find no reason to deviate from their findings.

The straightforward and coherent narration[36] provided by private complainants and B/T Lawas adequately established the events that transpired on the morning of 3 August 2008 at Reyes Avenue, Cebu City; in particular, the commission of the offense and the apprehension of the accused-appellants. The RTC and the CA also justifiably relied on the testimonies of private complainants, who positively identified Batuhan and Lacturan as the perpetrators of the crimes. Applying the criteria laid down by this Court in *Lejano v. People*,[37] We find that the

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[35] *People v. Banzuela,* G.R. No. 202060, 11 December 2013, 712 SCRA 735.

[36] *Rollo,* p. 116; CA *rollo,* p. 65.

[37] *Lejano v. People,* 652 Phil. 612 (2010).

identifications in this case were made by credible witnesses whose stories were inherently believable and not contrived. Here it has been established that private complainants clearly saw the two accused-appellants during the incident. Moreover, the former's testimonies were straightforward and devoid of any inconsistencies.

In their Brief,[38] Batuhan and Lacturan attempted to discredit the accuracy of the positive identification. They alleged that because it was dark when the incident transpired, it would not have been possible for complainants to sufficiently make out the faces of their attackers, let alone identify them in court. We are not convinced. The CA correctly cited the previous rulings of this Court on the sufficiency of artificial sources of light in cases in which identification is an issue.[39] We declared therein that any form of light – e.g., street lights or light posts – may be considered sufficient to allow the positive identification of a person's appearance for purposes of proving matters in court, so long as visibility is fairly established. [40] In this case, the prosecution was able to prove that there were fully functioning street lights when the robbery transpired.[41] These lights sufficiently illuminated the area during the incident and allowed private complainants to see the features of the accused-appellants.

With respect to the rape accusation against Batuhan, We agree with the CA and the RTC that the testimony of the victim sufficiently established the commission of the offense. Not only did she positively declare that Batuhan inserted his finger into her vagina without her consent; her statements were likewise supported by the testimony of Dr. Amadora and by a medical report indicating that the assault had inflicted considerable and visible injury to the victim's vagina.

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[38] CA *rollo,* pp. 53-55.

[39] *Rollo*, p. 19.

[40] See *People v. Dela Cruz,* 461 Phil. 471 (2003); *People v. Pueblas,* 212 Phil. 688 (1984); and *People v. Vacal,* 136 Phil. 284 (1969).

[41] *Rollo*, p. 19.

While the reliability of the medical report may have been called into question because of the admission made by AAA that she had sexual intercourse with her boyfriend before she was examined, We find this circumstance insufficient to negate the clear and convincing testimony of the victim herself. It is settled that a medical report is not indispensable to a prosecution for rape, since the credible testimony of the victim is sufficient for a conviction.[42] In any event, the medical report submitted by Dr. Amadora was only an evidence of the injuries supposedly sustained by AAA from the sexual assault. Even without that report, rape may still be established. We emphasize that the absence of genital injury does not at all mean that a victim was not sexually assaulted.[43]

This Court likewise affirms the refusal of the CA and the RTC to accord significance to the bare denials offered by the accused-appellants. Lacturan's defense of alibi, for instance, is inherently weak because it is self-serving. In fact, in *Lejano v. People,*[44] this Court declared that the defense of alibi is a hangman's noose in the face of a positive identification made by a witness. With respect to the allegation of Batuhan that he was the victim of a frame–up, We note that the assertion remained unproven. He failed to show any indication of bad faith or ill motive on the part of the members of the *barangay tanod* and the police officers involved in this case. Hence, these public officers remain entitled to the presumption of regularity.[45]

In view of the foregoing assessment of the evidence presented by both parties, We resolve to affirm the conviction of Batuhan for robbery with rape and of Lacturan for robbery.

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[42] *People v. Penilla y Francia*, 707 Phil. 130 (2013).

[43] See *People v. Salvador*, G.R. No. 207815, 22 June 2015; *People v. Pancho*, 462 Phil. 193-209 (2003).

[44] *Supra* note 37.

[45] *People v. Agulay y Lopez,* G.R. No. 181747, 26 September 2008.

The CA properly modified the civil penalties of both accused-appellants.

The Court upholds the modifications made by the CA with respect to the period of imprisonment of Lacturan and the civil penalties imposed on both accused-appellants.

We agree with the CA that Batuhan and Lacturan cannot be ordered to jointly indemnify the aggregate damages suffered by private complainants. This Court has imposed joint civil liability arising from criminal acts only in specific instances: e.g., in cases in which there was conspiracy among the accused;[46] or in prosecutions for illegal recruitment, in which the accused were treated as joint tortfeasors.[47] In other words, joint civil liability has been imposed only in criminal actions that were **jointly filed.** The rule does not apply to this case, in which the actions were filed separately, but **jointly tried.**

It must also be emphasized that the Informations in this case charged Batuhan and Lacturan with distinct offenses committed against two different victims – Batuhan was accused of committing robbery with rape against AAA, while Lacturan was charged with robbery perpetrated against Bacumo.[48] There was no indication of conspiracy, since neither of the accused-appellants was mentioned in the Information filed against the other.

In addition, each Information enumerated the specific items allegedly stolen by the individual accused-appellants. To declare them jointly liable for the aggregate value of the items stolen would clearly violate their right to be informed of the nature and cause of the charges against them. Pursuant to our

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[46] See *Zafra y Cubillo v. City Warden*, 186 Phil. 526 (1980) and *People v. Borromeo*, 60 Phil. 691 (1934) in which the accused were declared conspirators in the commission of the robbery; also see *People v. Garcia,* 424 Phil. 158 (2002), in which the accused were found guilty of kidnapping for ransom and serious illegal detention.

[47] *People v. Inovero*, G.R. No. 195668, 25 June 2014, 727 SCRA 257.

[48] CA *rollo*, pp. 58-59.

pronouncement in *People v. Ortega*[49] that liability should only arise from whatever was charged, neither of the two accused-appellants should be made liable for any part of the crime of the other.

The prison sentence imposed on Lacturan and the damages awarded to the private complainants must be modified.

As to the adjustment in the prison term of Lacturan, we deem it proper to modify the maximum penalty of 8 years of *prision mayor* imposed by the CA.

Although the period is within the maximum of the indeterminate sentence imposable upon Lacturan under Article 76[50] in relation to Article 294(5)[51] of the RPC, the Court notes the absence of any justification to impose the upper limit of the penalty. Accordingly, we resolve to reduce the maximum of the indeterminate sentence to **6 years, 1 month and 11 days** of *prision mayor*. We maintain the minimum of the indeterminate sentence imposed by the CA i.e. 4 years and 2 months of *prision correccional.*

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[49] 342 Phil. 124 (1997); also see *Burgos v. Sandiganbayan,* 459 Phil. 794 (2003).

[50] Article 76 of the RPC:

Art. 76. *Legal period of duration of divisible penalties.* — The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum in the manner shown in the following table:

x x x

Prision mayor. Time included in its medium period: From 8 years and 1 day to 10 years.

[51] Article 295 of the RPC:

Art. 295. Robbery with violence against or intimidation of persons; Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer: x x x 5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases (as amended by R.A. 18).

Moreover, to conform with recent jurisprudence, the amount of damages awarded by the CA to AAA must be modified. In line with the ruling in *People v. Jugueta,*[52] Batuhan is liable to pay AAA the following amounts: ₱2,130 as actual damages; ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; and ₱75,000.00 as exemplary damages. Lacturan, on the other hand, must pay Bacumo ₱2,500, but as actual damages and not as civil indemnity. This amount represents the value of the property stolen from the victim.[53] The award of moral damages to Bacumo in the amount of ₱20,000 is proper[54] and must be sustained.

WHEREFORE, premises considered, the instant appeal is **DENIED**. The Court of Appeals Decision dated 17 March 2015 in CA-G.R. CEB-CR-HC No. 01366 is hereby **AFFIRMED with MODIFICATION** in regard to the period of imprisonment of Ashley Planas Lacturan and the amount of damages to be paid to AAA.

Accused Ashley Planas Lacturan is hereby sentenced to suffer an indeterminate penalty of 4 years and 2 months of *prision correccional,* as minimum, to 6 years, 1 month and 11 days of *prision mayor,* as maximum.

Accused-appellant Roberto Batuhan is ordered to pay AAA: (a) ₱2,130 as actual damages; (b) ₱75,000.00 as civil indemnity; (c) ₱75,000.00 as moral damages; and (d) ₱75,000.00 as exemplary damages. Accused-appellant Ashley Planas Lacturan is ordered to pay Melito Bacumo: (a) ₱2,500 as actual damages; and (b) ₱20,000 as moral damages. All the monetary awards for damages shall earn interest at the rate of 6% per annum from the date of finality of this Resolution until fully paid.

SO ORDERED.

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

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

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

[54] *See Mance v. People*, G.R. No. 215567 (Notice), 9 March 2015.

FIRST DIVISION

[A.C. No. 8210. August 8, 2016]

SPOUSES MANOLO AND MILINIA NUEZCA, *complainants, vs.* **ATTY. ERNESTO V. VILLAGARCIA,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; A LAWYER'S LANGUAGE SHOULD ALWAYS BE DIGNIFIED AND RESPECTFUL, BEFITTING THE DIGNITY OF THE LEGAL PROFESSION.—** Rule 8.01, Canon 8 of the CPR provides: A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper. In this case, the demand letter that respondent sent to complainants contained not merely a demand for them to settle their monetary obligations to respondent's client, but also used words that maligned their character. It also imputed crimes against them, *i.e.*, that they were criminally liable for worthless or bum checks and *estafa*. x x x Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. x x x [T]he Court finds that the penalty of suspension for one (1) month from the practice of law should be meted upon respondent.

2. **ID.; ID.; FAILURE TO ANSWER COMPLAINT AND TO APPEAR AT INVESTIGATION ARE EVIDENCE OF DISRESPECT TO THE COURT.—** [R]espondent failed to answer the verified complaint and attend the mandatory hearings set by the IBP. Hence, the claims and allegations of the complainants remain uncontroverted. In *Ngayan v. Tugade*, the Court ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court."

RESOLUTION

PERLAS-BERNABE, *J.*:

The instant administrative case arose from a verified complaint[1] for disbarment filed by complainants Spouses Manolo and Milinia Nuezca (complainants) against respondent Atty. Ernesto V. Villagarcia (respondent) for grave misconduct, consisting of alleged unethical conduct in dealings with other persons.

The Facts

In their verified complaint, complainants averred that respondent sent them a demand letter[2] dated February 15, 2009, copy furnished to various offices and persons, which contained not only threatening but also libelous utterances. Allegedly, the demand letter seriously maligned and ridiculed complainants to its recipients. Complainants likewise posited that several news clippings[3] that were attached to the demand letter were intended to sow fear in them, and claimed that the circulation thereof caused them sleepless nights, wounded feelings, and besmirched reputation.[4] Thus, they maintained that respondent should be held administratively liable therefor.

In a Resolution[5] dated July 22, 2009, the Court directed respondent to file his comment to the verified complaint. However, for failure to serve the aforesaid Resolution at respondent's address given by the Integrated Bar of the Philippines (IBP), the complainants were then ordered[6] to furnish

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

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

[3] *Id*. at 11-27.

[4] *Id*. at 2.

[5] *Id*. at 97.

[6] See Resolution dated September 28, 2011; *id*. at 100.

the Court the complete and correct address of respondent. Still, complainants failed to comply with the Court's directive; thus, the Court resolved,[7] among others, to refer the case to the IBP for investigation, report, and recommendation, which set the case for a mandatory conference/hearing.[8]

Unfortunately, despite notices,[9] complainants failed to appear for the scheduled mandatory hearings. Likewise, the notices sent to respondent were returned unserved with the notations "RTS Moved Out" and "RTS Unknown." Thus, in an Order[10] dated October 24, 2014, the IBP directed the parties to submit their respective verified position papers together with documentary exhibits, if any.

The IBP's Report and Recommendation

In its Report and Recommendation[11] dated May 29, 2015, the IBP-Commission on Bar Discipline (CBD), through Commissioner Honesto A. Villamor, recommended that respondent be suspended from the practice of law for a period of three (3) months for violation of Rule 8.01 of the Code of Professional Responsibility (CPR). Likewise, for defying the lawful order of the IBP, the latter recommended that respondent be declared in contempt of court and fined the amount of ₱1,000.00, with a warning that repetition of the same or similar offense shall be dealt with more severely.[12]

The IBP found that respondent failed to rebut complainants' allegations in their verified complaint. Moreover, despite repeated notices and directives from the IBP to appear for the mandatory

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[7] *Id*. at 103-104.

[8] *Id*. at 106.

[9] See Order dated August 27, 2014 and Order dated October 24, 2014; *id*. at 107-108.

[10] *Id*. at 108, including dorsal portion.

[11] *Id*. at 115-117.

[12] *Id*. at 117.

hearings, as well as to file his pleadings, respondent failed to do so, which was tantamount to defiance of the lawful orders of the IBP amounting to conduct unbecoming of a lawyer. Finding that respondent did not intend to file any comment and in the process, purposely delayed the resolution of the instant case, the IBP recommended that respondent be held in contempt of court.[13]

In a Resolution[14] dated June 20, 2015, the IBP Board of Governors resolved to adopt and approve with modification the May 29, 2015 Report and Recommendation of the IBP — CBD by suspending respondent from the practice of law for a period of six (6) months and deleting the fine imposed on him.

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable based on the allegations of the verified complaint.

The Court's Ruling

The Court has examined the records of this case and partially concurs with the findings and recommendations of the IBP Board of Governors.

The practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality. Any violation of these standards exposes the lawyer to administrative liability.[15] Rule 8.01, Canon 8 of the CPR provides:

> Rule 8.01. – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

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[13] *Id.* at 116-117.

[14] See Notice of Resolution in Resolution No. XXI-2015-542 signed by IBP National Secretary Nasser A. Marohomsalic; *id.* at 114, including dorsal portion.

[15] *Barandon, Jr. v. Ferrer, Sr.,* 630 Phil. 524, 530 (2010).

In this case, the demand letter that respondent sent to complainants contained not merely a demand for them to settle their monetary obligations to respondent's client, but also used words that maligned their character. It also imputed crimes against them, *i.e.,* that they were criminally liable for worthless or bum checks and *estafa.* The relevant portion of the demand letter states:

> An early check on the records of some courts, credit-reporting agencies and law enforcement offices revealed that the names 'MANOLO NUEZCA' and/or 'MANUELO NUEZCA' and 'MILINIA NUEZCA' responded to our search being involved, then and now, in some 'credit-related' cases and litigations. Other record check outcomes and results use we however opt to defer disclosure in the meantime and shall be put in issue in the proper forum as the need for them arise, [sic]
>
> All such accumulated derogatory records shall in due time be reported to all the appropriate entities, for the necessary disposition and "blacklisting" pursuant to the newly-enacted law known as the "Credit Information Systems Act of 2008."
>
> x x x x x x x x x
>
> II. Your several issued BDO checks in 2003 and thereabouts were all unencashed as they proved to be "worthless and unfounded." By law, you are liable under BP 22 (Boun[c]ing Checks Law) and Art. 315, Par. 2 (d) SWINDLING/ESTAFA, RPC.
>
> III. For all your deceit, fraud, schemes and other manipulations to defraud Mrs. Arcilla, taking advantage of her helplessness, age and handicaps to her grave and serious damage, you are also criminally liable under ART. 318, OTHER DECEITS. RPC.[16]

Indeed, respondent could have simply stated the ultimate facts relative to the alleged indebtedness of complainants to his client, made the demand for settlement thereof, and refrained from the imputation of criminal offenses against them, especially considering that there is a proper forum therefor and they have yet to be found criminally liable by a court of proper jurisdiction.

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[16] See Demand Letter dated February 15, 2009, *rollo*, pp. 7-9.

Respondent's use of demeaning and immoderate language put complainants in shame and disgrace. Moreover, it is important to consider that several other persons had been copy furnished with the demand letter. As such, respondent could have besmirched complainants' reputation to its recipients.

At this juncture, it bears noting that respondent failed to answer the verified complaint and attend the mandatory hearings set by the IBP. Hence, the claims and allegations of the complainants remain uncontroverted. In *Ngayan v. Tugade,* [17] the Court ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138, Rules of Court."[18]

Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum.[19] Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive.[20] In this regard, all lawyers should take heed that they are licensed officers of the courts who are mandated to maintain the dignity of the legal profession, hence, they must conduct themselves honorably and fairly.[21] Thus, respondent ought to temper his words in the performance of his duties as a lawyer and an officer of the court.

Anent the penalty to be imposed on respondent, the Court takes into consideration the case of *Ireneo L. Torres and Mrs.*

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[17] 271 Phil. 654(1991).

[18] *Id*. at 659.

[19] *Barandon, Jr. v. Ferrer, Sr., supra* note 15, at 532.

[20] *Gimeno v. Zaide,* A.C. No. 10303, April 22, 2015, 757 SCRA 11, 25.

[21] *Reyes v. Chiong, Jr.,* 453 Phil. 99, 104 (2003).

Natividad Celestino v. Jose Concepcion Javier[22] where respondent-lawyer was suspended from the practice of law for a period of one (1) month for employing offensive and improper language in his pleadings. In light thereof, and considering that the IBP's recommended penalty is not commensurate to respondent's misdeed in this case, the Court finds that the penalty of suspension for one (1) month from the practice of law should be meted upon respondent.

WHEREFORE, respondent Atty. Ernesto V. Villagarcia is found **GUILTY** of violation of Rule 8.01, Canon 8 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) month, effective upon his receipt of this Resolution, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Resolution be attached to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Caguioa, JJ.,* concur.

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[22] 507 Phil. 397 (2005).

SECOND DIVISION

[A.C. No. 10443. August 8, 2016]

WILLIAM G. CAMPOS, JR., represented by ROSARIO B. CAMPOS, RITA C. BATAC and DORINA D. CARPIO, *complainants, vs.* **ATTY. ALEXANDER C. ESTEBAL,** *respondent.*

SYLLABUS

LEGAL ETHICS; BREACH OF PROFESSIONAL RESPONSIBILITY; COMMITTED BY LAWYER IN RECEIVING SUBSTANTIAL SUMS WITHOUT INTENTION TO HONOR HIS WORD TO SECURE THE U.S. TOURIST VISAS HE PROMISED TO GET FOR COMPLAINANTS; PENALTY.— There is hardly any doubt that Atty. Estebal's act of receiving such substantial sums from complainants without in the least intending to honor his word to secure the U.S. tourist visas that he promised to get for them constitutes a breach of his professional responsibility. It was both a refusal and a failure to give complainants their due; it was also both a refusal and a failure to observe honesty and good faith in his dealings with them. Indeed, Atty. Estebal acted unjustly; he denied complainants their due; and he displayed unmitigated dishonesty and bad faith in his professional and personal relations with complainants. x x x Under the foregoing circumstances, we believe that the recommended penalty of suspension from the practice of law for a period of six (6) months must be upgraded to suspension from the practice of law for one (1) year.

APPEARANCES OF COUNSEL

Vincent Emmanuel T. Cruz for complainants.
Estebal & Partners Law Firm for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This is a Complaint[1] for Disbarment instituted by William G. Campos, Jr. (Campos), represented by his wife, Rosario B. Campos, and by Rita C. Batac (Batac) and Dorina D. Carpio (Carpio) against respondent Atty. Alexander C. Estebal (Atty. Estebal). The Complaint was docketed as CBD Case No. 07-2075 of the Integrated Bar of the Philippines (IBP).

The facts of the case are as follows:

In the early part of 2006, complainants engaged the services of Atty. Estebal to assist each of them in securing tourist visas to the United States (U.S.). Toward this end, on January 24, 2006, Campos and Atty. Estebal entered into a Service Contract[2] stipulating an acceptance/service fee of ₱200,000.00 exclusive of out-of-pocket expenses such as tickets, filing fees, and application fees; and that in case no visa is issued, Campos is entitled to a refund of what has been actually paid less 7% thereof. Campos paid Atty. Estebal the sum of ₱150,000.00. For their part, Batac and Carpio gave Atty. Estebal the amounts of ₱75,000.00 and ₱120,000.00, respectively. Unlike Campos, their agreement with Atty. Estebal was not put in writing.

Complainants claimed that despite receipt of their monies, Atty. Estebal failed to apply or secure for them the U.S. tourist visas that he promised. Thus, they demanded for the return of their monies. Atty. Estebal, however, failed to return the amount despite repeated demands. Hence, they filed this Complaint praying that Atty. Estebal be suspended or disbarred from the practice of law, and that he be directed to return their monies.

In his Answer,[3] Atty. Estebal averred: (1) that he is a practicing lawyer specializing in immigration, international law and illegal

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[1] *Rollo* pp. 2-4.

[2] *Id*. at 60.

[3] *Id*. at 29-39.

arrest cases, including the procurement of tourist visas; (2) that like any other professional, he is paid not only for the results he delivered, but also for the time, talent, industry and other items of professional services he rendered, irrespective of the result/s thereof; (3) that his professional services were engaged by complainants for the purpose of enabling them to secure or obtain tourist visas from the U.S. Embassy in Manila; (4) that after interviewing complainants individually, he suggested that complainants file a collective application, meaning that the complainants, along with other applicants for a U.S. tourist visa, should constitute themselves into a tour group, so that their overall chances of obtaining visas for all members of the group would be enhanced; (5) that he made this suggestion because he believed that the more applicants join the group, the lesser the fees that would be charged; (6) that it was agreed that a group of 10 applicants would comprise a tour group; (7) that although some applicants paid the proper fees and submitted the required documents, others neither paid the proper fees nor submitted the necessary documents; (8) and that because of this lack of cohesive action, the plan did not push through at all.

Atty. Estebal posited that complainants' demand for the return or refund of their money has no factual or legal basis at all, especially because he had invested considerable time, talent and energy in the processing of complainants' tourist visa applications with the U.S. Embassy.

Report and Recommendation of the Investigating Commissioner

In his Commissioner's Report,[4] Investigating Commissioner Jose I. De la Rama, Jr. (Investigating Commissioner), noted that Atty. Estebal received a total of ₱345,000.00 from complainants; that notwithstanding receipt thereof, Atty. Estebal did not make any attempt to process or submit their visa applications; that even if the amount collected is considered as attorney's fees, the same is excessive; and that even if Atty.

[4] *Id*. at 215-225.

Estebal is entitled to attorney's fees, the amount of ₱15,000.00 would be considered appropriate under the circumstances. Thus, the Investigating Commissioner recommended that Atty. Estebal be suspended from the practice of law for six (6) months for violating Canons 15, 16 and 20 of the Code of Professional Responsibility; moreover, it was recommended that Atty. Estebal be directed to refund the amount of ₱330,000.00 and to retain the amount of ₱15,000.00 as his attorney's fees, *viz.*:

> WHEREFORE, premises considered, and after evaluation of the evidence presented by both parties, the undersigned believes that ATTY. ALEXANDER ESTEBAL, SR. should be SUSPENDED from the practice of law for a period of six (6) months. In addition thereto, he is being ordered to immediately return the following amounts to the complainants, to wit:
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> (1) William Campos, Jr. – the amount of ₱145,000.00
> (2) Rita Batac – the amount of ₱70,000.00
> (3) Dorina Carpio – the amount of ₱115,000.00[5]

Recommendation of the IBP Board of Governors

On December 29, 2012, the IBP Board of Governors issued Resolution No. XX-2012-665, affirming with modification the Investigating Commissioner's recommendation, thus:

> RESOLVED TO ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, Respondent is hereby Ordered to Return the amount of Three Hundred Thousand (₱300,000.00) Pesos only with legal interest to complainant[s] within thirty (30) days from receipt of notice with a Warning to be more circumspect in his dealings and repetition of the same or similar act shall be dealt with more severely.[6]

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[5] *Id*. at 225.

[6] *Id*. at 214.

In fine, the IBP Board of Governors resolved to delete the recommended penalty of suspension and reduce the amount refunded from ₱330,000.00 to ₱300,000.00.

On April 2, 2013, Atty. Estebal filed an Urgent Manifestation with Motion for Extension to file Motion for Reconsideration.[7] This was followed by an Urgent Manifestation and Motion for Second Extension of Time to File Motion for Reconsideration[8] on April 19, 2013. Atty. Estebal eventually filed his Motion for Reconsideration[9] on April 28, 2013.

On February 11, 2014, the IBP Board of Governors issued Resolution No. XX-2014-29, to wit:

> RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Furthermore, the Board RESOLVED to AFFIRM, with modification, Resolution No. XX-2012-665 dated December 29, 2012, and accordingly ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner SUSPENDING Respondent from the practice of law for six (6) months.[10]

In short, the IBP Board of Governors resolved to reinstate and adopt the recommendation of the Investigating Commissioner to suspend Atty. Estebal from the practice of law for a period of six (6) months.

On April 25, 2014, Director for Bar Discipline Dominic C.M. Solis transmitted the entire records of this case to this Court for final resolution. Per records of the Office of the Bar Confidant, no motion for reconsideration or petition for review has been filed by either party.

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[7] *Id*. at 226-228.

[8] *Id*. at 229-231.

[9] *Id*. at 235-245.

[10] *Id*. at 252.

Issue

Is Atty. Estebal guilty of professional misconduct for violating the pertinent provisions of the Code of Professional Responsibility?

Our Ruling

We have gone over the records of this case with utmost care and we fully agree with the following pertinent findings and well-thought-out assessment of the Investigating Commissioner:

> Obviously, the complainants failed to get the US visa. There was even no attempt on the part of the respondent to submit the application form for US Visa before the US Embassy. Respondent failed to attach any record that will show that he made an attempt to submit the same either individually or collectively.
>
> What is clear is that the amount individually paid by the complainants went to the pocket of the respondent. It is not even clear if it is for the payment of his attorney's fees or for the payment of the application for the US visa, as above stated, an applicant has to spend only ₱6,157.00. Thus, by mere mathematical computation, the amount of ₱200,000.00 contract with complainant William Campos is excessive. If it is for the payment of attorney's fees, the same is also considered excessive and unreasonable.
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> While lawyers are entitled to the payment of attorney's fees, the same should be reasonable under the circumstances. Even if we base the attorney's fees of the respondent on x x x quantum meruit, still, the amount collected by the respondent is still excessive. The Supreme Court, in justifying quantum meruit, has laid down the following requisites:
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> > Recovery of attorney's fees on the basis of quantum meruit is authorized (1) when there is no express contract for payment of attorney's fees (2) when although there is a formal contract for attorney's fees, the fees stipulated are found unconscionable or unreasonable by the Court (3) when the contract for attorney's fees is void due to purely formal defects of execution (4) when the lawyer for justifiable cause was not able to finish the case for its conclusion (5) when the lawyer and the client disregard the contract for attorney's fees and (6) when the client dismissed

> his client before the termination of the case or the latter withdrew therefrom for valid reason (Rillaroza Africa de Ocampo and Africa vs. Eastern telecommunications Phils., Inc., 128 SCRA 475).

Undersigned believes that since the amount received by the respondent either as payment for attorneys' fees or either as payment for visa application is **excessive**, respondent should return the money to the complainant. The attorney's fees is **excessive** in a sense that in the Service contract (Annex "B" attached to the Position Paper of the complainant), the scope of work are as follows:

> SCOPE OF WORK. Initial interview of client and collation of all x x x information relevant to the case; assessment of case; evaluation of documents; formulation of the theory of the case; filing up of forms, DS-156 & 157; general briefing, specific briefing including mock interview.

If this is only the scope of work done by the respondent, the amount of ₱200,000.00 that he received from complainant William Campos is really excessive.

It is unfortunate that respondent failed to appear personally before this Commission in order to confront the complainants face to face.

Respondent clearly violated Canons 15, 16 and 20 of the Code of Professional Responsibility

> CANON 15 – A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.
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> CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
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> Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.
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> CANON 20 – A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.
>
> Rule 20.01 – A lawyer shall be guided by the following factors in determining his fees.

Respondent violated Canon 15 for the reason that he was not candid enough to tell the complainants their chance[s] of getting [a] US visa. Instead, the respondent made the complainants believe that they will have a good chance of getting the US visa if they will be joined with other groups. It turned out to be false. Complainants waited for so long before the respondent could find other members of the group. In the end, nothing happened.

He also violated Canon 16, Rule 16.01 because he did not account [for] the money he received from the complainants. It is not clear to the complainants how much is the amount due to the respondent.

Lastly, it appears that the attorney's fees that he collected from the complainants are excessive and unreasonable. Considering the degree of work and number of hours spent, the amount he collected from the complainants is not commensurate to the degree of services rendered. Obviously, respondent took advantage of the weakness of the complainants in their desire to go the United States.

After evaluating the evidence presented by both parties, the undersigned believes that the complainants have satisfactorily shown the degree of the required evidence to convince this Commission that indeed, Atty. Estebal, Sr. should be held administratively liable.

That in fairness to the respondent, he is also entitled to his attorney's fees. Having performed the scope of work he mentioned in his contract, the amount of ₱5,000.00 per complainant would be reasonable payment for his attorney's fee. It is but proper to deduct the ₱5,000.00 from each complainant as reasonable attorneys' fees.[11]

There is hardly any doubt that Atty. Estebal's act of receiving such substantial sums from complainants without in the least intending to honor his word to secure the U.S. tourist visas that he promised to get for them constitutes a breach of his professional responsibility. It was both a refusal and a failure to give complainants their due; it was also both a refusal and a failure to observe honesty and good faith in his dealings with them. Indeed, Atty. Estebal acted unjustly; he denied complainants their due; and he displayed unmitigated dishonesty

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[11] *Id.* at 218-224.

and bad faith in his professional and personal relations with complainants.

In *Nery v. Sampana*,[12] the Court declared that:

> Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Every case accepted by a lawyer deserves full attention, diligence, skill and competence, regardless of importance. A lawyer also owes it to the court, their clients, and other lawyers to be candid and fair. Thus, the Code of Professional Responsibility clearly states:
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> x x x x x x x x x
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> x x x A lawyer's failure to return upon demand the funds held by him gives rise to the presumption that he has appropriated the same for his own use, in violation of the trust reposed in him by his client and of the public confidence in the legal profession.[13]

Similarly, the Court is *Jinon v. Atty. Jiz*,[14] pronounced that:

> [M]oney entrusted to a lawyer for a specific purpose, such as for the processing of transfer of land title but not used for the purpose, should be immediately returned. A lawyer's failure to return upon demand the funds held by him on behalf of his client gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed to him by his client. Such act is a gross violation of general morality as well as of professional ethics. It impairs public confidence in the legal profession and deserves punishment.[15]

Under the foregoing circumstances, we believe that the recommended penalty of suspension from the practice of law for a period of six (6) months must be upgraded to suspension from the practice of law for one (1) year. In all other respects, the recommendation of the IBP Board of Governors as contained in Resolution No. XX-2014-29 is hereby adopted.

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[12] A.C. No. 10196, September 9, 2014, 734 SCRA 486.

[13] *Id*. at 491-493.

[14] 705 Phil. 321 (2013).

[15] *Id*. at 328.

ACCORDINGLY, respondent Atty. Alexander C. Estebal is hereby found **GUILTY** of violating the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon receipt of this Decision. He is also **ORDERED** to return the amounts of ₱135,000.00 to William G. Campos, Jr., ₱60,000.00 to Rita C. Batac; and ₱105,000.00 to Dorina D. Carpio. Atty. Alexander C. Estebal is **WARNED** that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

Carpio (*Acting C.J.*) and *Leonen, JJ.,* concur.

Brion, J., on leave.

Mendoza, J., on official leave.

FIRST DIVISION

[A.M. No. P-16-3418. August 8, 2016]
(Formerly A.M. No. P-12-3-46-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ANTONIA P. ESPEJO, STENOGRAPHER III, REGIONAL TRIAL COURT, BRANCH 20, VIGAN CITY, ILOCOS SUR**, *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; SIMPLE MISCONDUCT; COMMITTED

FOR CARELESSNESS IN RECEIVING COURT RECORDS NOT INTENDED FOR THEIR COURT, RESULTING IN ITS LOSS BEYOND RECOVERY; PENALTY.— [T]he records of LRC Case No. N-026 were missing beyond recovery. Antonia P. Espejo (Espejo), Stenographer III of the Regional Trial Court, Branch 20 (RTC-Branch 20) of Vigan City, Ilocos Sur was the one who received the records when it was ordered returned by the Court of Appeals to the court of origin but was mistakenly delivered to the RTC. x x x Although Espejo was not the official custodian of the records in LRC Case No. N-026, the fact that said records were in her possession made her responsible for the same. x x x Espejo is liable for simple misconduct. x x x Espejo displayed carelessness and disregard for case records, and the loss of such records eventually reflected badly on the courts and caused undue inconvenience, expenses, and delay for the parties. Simple misconduct is punishable under Section 52 (B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service with suspension for one (1) month and one (1) day to six (6) months. However, taking into consideration the mitigating circumstances that Espejo has been in service in the judiciary for more than 30 years and this is her first offense, the Court deems that a fine amounting to Five Thousand Pesos (₱5,000.00) is already sufficient penalty.

R E S O L U T I O N

LEONARDO-DE CASTRO, *J.*:

This administrative matter arose from the letter[1] dated March 10, 2011 of Judge Francisco A. Ante, Jr. (Judge Ante) of the Municipal Trial Court in Cities (MTCC), Vigan City, Ilocos Sur, informing the Office of the Court Administrator (OCA) that the records of LRC Case No. N-026, *Spouses Jose Bello and Corazon Bello,* were missing and beyond recovery. Judge Ante suggested that Antonia P. Espejo (Espejo), Stenographer III of the Regional Trial Court, Branch 20 (RTC-Branch 20) of

[1] *Rollo*, p. 4.

Vigan City, Ilocos Sur, be investigated as she was reportedly the one who received the records when it was ordered returned by the Court of Appeals to the court of origin but was mistakenly delivered to the RTC.

The Court, in a Resolution[2] dated April 18, 2012, referred Judge Ante's letter to the Executive Judge of the RTC of Vigan City, Ilocos Sur, for investigation, report, and recommendation.

The case was set for hearing on July 2, 2012.

It was revealed during the hearing that spouses Jose Bello and Corazon Bello (spouses Bello) filed with the MTCC an Application for the Original Registration of Land Title, docketed as LRC Case No. N-026. In its Decision dated May 28, 2001, the MTCC granted the spouses Bello's Application. However, the Office of the Solicitor General (OSG) filed an appeal of the RTC judgment before the Court of Appeals on June 26, 2001, docketed as CA-G.R. CV No. 71667. Consequently, the entire records of the case was transmitted to the Court of Appeals.

On April 19, 2007, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the assailed Decision dated May 28, 2011 of the Municipal Trial Court of Vigan, Ilocos Sur is **REVERSED** and **SET ASIDE**. The application for registration of title over the subject property covered by Plan AP-01-004931 is **DISMISSED**.[3]

The aforementioned decision of the Court of Appeals became final and executory and recorded in the book of entries of judgments on May 19, 2007. The appellate court then ordered that the records of the case be remanded to the court of origin.

Sometime in October 2010, the spouses Bello went to the MTCC to verify if the records of the case have been remanded to it as the court of origin and to retrieve their documentary

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[2] *Id*. at 16.

[3] *Id*. at 20.

evidence so they could refile their application for registration of title. It was then that Amelita O. Ranches (Ranches), Clerk of Court IV of the MTCC, discovered that the records of LRC Case No. N-026 was not yet with their office. Ranches personally went to the Court of Appeals and discovered that the records of LRC Case No. N-026 was already remanded and mailed by the Court of Appeals as "parcel 197" on March 17, 2008. According to the registry book of the Postal Office of Vigan City, parcel 197 was mistakenly delivered by the postman to RTC-Branch 20, where it was received by Espejo. Ranches personally contacted Espejo and requested the latter to deliver or produce the records of LRC Case No. N-026 within two weeks, but Espejo did not comply with Ranches' request. Thereafter, Judge Ante himself confronted Espejo about the records of LRC Case No. N-026 but Espejo categorically denied receiving said records despite the evidence shown to her.

Espejo, in her affidavit[4] dated July 6, 2012, admitted that on March 24, 2008 at around 12:00 o'clock noon, she received from postwoman Eden Cabusora (Cabusora) five mails: one for Samuel G. Andres and the rest for RTC-Branch 20. After Cabusora left their office, Espejo segregated the mails and noticed that one of them was addressed to the Clerk of Court of MTCC, Vigan, Ilocos Sur. Espejo claimed that she immediately turned over said mail to Ranches but the latter did not give her any proof of receipt. On October 12, 2010, Espejo was approached by Ranches and Cabusora who asked Espejo to confirm that it was her signature affixed on the delivery book of the Postal Office of Vigan City, Ilocos Sur, which Espejo did. When Ranches and Cabusora inquired as to the whereabouts of the records of LRC Case No. N-026, Espejo answered that she immediately handed the said records to Ranches, who received the same. Espejo averred that she had no relationship with any of the parties in LRC Case No. N-026 and she had no personal interest to conceal or hide the records in said case. Espejo also argued that she was not the custodian of the said records so

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[4] *Id*. at 24-25.

she could not be made responsible for the loss thereof. Espejo lastly pointed out that she had never been charged of any criminal, civil, or administrative case.

On August 14, 2014, Executive Judge Cecilia Corazon S. Dulay-Archog (Judge Dulay-Archog) of the RTC of Vigan City, Ilocos Sur, submitted her report, at the end of which she recommended:

> The undersigned believes that the matter of mistaken deliveries and eventual loss of mail matters and records can be addressed by training and educating court staff and implementing office systems in each court. No doubt, both courts have learned from this experience and have adopted systems in place in their respective courts.
>
> In this particular instance where no prejudice was shown to have caused any party, the records of the subject case LRC Case No. N-026 if required to be reconstituted may be done at the order of the Municipal Trial Court in Cities.[5]

The Court referred Executive Judge Dulay-Archog's report to the OCA on December 8, 2014, for evaluation, report and recommendation.[6]

The OCA submitted its report on December 1, 2015, with the following recommendations:

> **IN VIEW OF THE FOREGOING**, it is respectfully recommended for the consideration of the Honorable Court that:
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> 1. the instant matter be **RE-DOCKETTED** as a regular administrative matter;
>
> 2. the Investigation Report dated 14 August 2014 of Judge Cecilia Corazon S. Dulay-Archog, Branch 21, Regional Trial Court, Vigan City, Ilocos Sur, be **NOTED**; and

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[5] *Id*. at 52.

[6] *Id*. at 53.

> 3. respondent Antonia P. Espejo, Stenographer III, Branch 20, RTC, Vigan City, Ilocos Sur, be found **GUILTY** of Simple Misconduct and be fined in the amount of ₱5,000.00 with a **STERN WARNING** that commission of any similar act would be dealt with more severely.[7]

In accordance with the Manifestation[8] of Espejo, the present administrative matter was submitted for resolution based on the pleadings filed.

The Court agrees with the findings and recommendation of the OCA.

It is undeniable that Espejo received the records of LRC Case No. N-026 from the postwoman, Cabusora, on March 24, 2008. In the first place, Espejo should have carefully checked each mail delivered if it was intended for RTC-Branch 20 or any person in said office before she received and signed for the same. And in the event that she mistakenly received mail not intended for her office, such as the records in LRC Case No. N-026, Espejo was still expected to exercise care and diligence while the same was in her custody, especially in this case, when she was well aware that the mail was addressed to another court. Although Espejo was not the official custodian of the records in LRC Case No. N-026, the fact that said records were in her possession made her responsible for the same. Espejo's claim that she immediately turned over the records of LRC Case No. N-026 to Ranches is unsubstantiated. Apart from Espejo's allegation, there is no other credible evidence that said records had actually been turned over to and received by Ranches. Indeed, Espejo is liable for simple misconduct.

In *The Office of the Ombudsman-Visayas v. Castro*,[9] the Court distinguished between grave and simple misconduct, thus:

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[7] *Id*. at 66.

[8] *Id*. at 70.

[9] G.R. No. 172637, April 22, 2015.

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifest and established by substantial evidence. Grave misconduct necessarily includes the lesser offense of simple misconduct. Thus, a person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the elements to qualify the misconduct as grave.

That the records of LRC Case No. N-026 may be reconstituted does not absolve Espejo of her administrative liability. Espejo displayed carelessness and disregard for case records, and the loss of such records eventually reflected badly on the courts and caused undue inconvenience, expenses, and delay for the parties.

Simple misconduct is punishable under Section 52(B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service with suspension for one (1) month and one (1) day to six (6) months. However, taking into consideration the mitigating circumstances that Espejo has been in service in the judiciary for more than 30 years and this is her first offense, the Court deems that a fine amounting to Five Thousand Pesos (₱5,000.00) is already sufficient penalty.

WHEREFORE, in view of the foregoing, the Court finds respondent Antonia P. Espejo, Stenographer III of the Regional Trial Court, Branch 20 of Vigan City, Ilocos Sur, **GUILTY** of simple misconduct and imposes upon her a **FINE** of Five Thousand Pesos (₱5,000.00), with a **STERN WARNING** that a repetition of the same or similar acts will warrant a more severe penalty.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Bersamin, Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

FIRST DIVISION

[G.R. No. 177875. August 8, 2016]

ATTY. RODOLFO D. MATEO, *complainant, vs.* **EXECUTIVE SECRETARY ALBERTO G. ROMULO, DEPUTY EXECUTIVE SECRETARY ARTHUR P. AUTEA, PRESIDENTIAL ANTI-GRAFT COMMISSION, OFFICE OF THE PRESIDENT, JOSE J. BELTRAN, EVELYN F. DACUYCUY, C.G. DUMATAY, HIGINO C. MANGOSING, JOEY C. CASTRO, PACITA F. BARBA, RICARDO OLARTE, BELEN I. JUAREZ, LIZA T. OLIVAR, LUISA C. BOKINGO, SANDRO JESUS T. SALES, EDGARDO T. AGBAY, EDUARDO F. PACIO, MILDRED V. BEADOY, FRANCIS B. HILARIE, MA. NERIZZA L. BERDIN, LUIS S. RONGAVILLA, ARLENE C. DIAZ, MARY JANE M. LAPIDEZ, MELCHOR P. ABRIL, VILMA A. VERGARA, MA. ISABEL S. NOFUENTE, BEATRIZ N. SORIANO, MA. ANNABELLE S. LUSUNG, JAIME M. NOFUENTE, ERLINDA RIZO, MA. CHARINA S. GONZALES, LILIAN P. GACUSAN, MA. ANGELICA R. RONGAVILLA, EVELYN V. AYSON, CHARITO M. MENGUITO, ARLEEN E. BATAC, RENATO R. RIZO, EDUARDO D. ADINO, MILAGROS M. VELASCO, BELEN T. TORMON, RENATO P. GOJO CRUZ and EMMIE L. RUALES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; FORMAL TRIAL-TYPE HEARING IS NOT REQUIRED.— [A]dministrative due process simply means the opportunity to be heard or to explain one's side, or to seek a reconsideration of the action or ruling complained of. For him to insist on a formal trial-type hearing in which he could confront his accusers was bereft of legal basis considering that he had been duly notified of the

complaint against him and of the formal hearings conducted by the PAGC. He had also filed his answer to the complaint and participated in the formal hearings. For sure, the trial-type hearing was not indispensable in administrative cases. The requirements of administrative due process were satisfied once the parties were afforded the fair and reasonable opportunity to explain their respective sides. The administrative agency could resolve the issues based solely on position papers, affidavits or documentary evidence submitted by the parties.

2. ID.; ID.; PERSONAL DATA SHEET (PDS); FAILURE OF PUBLIC SERVANT TO DISCLOSE THE FACT OF HIS CONVICTION BY FINAL JUDGMENT OF A CRIME PUNISHED WITH *RECLUSION TEMPORAL* IS GUILTY OF DISHONESTY AND MAY BE DISMISSED FROM SERVICE EVEN IF THE CHARGE IS COMMITTED FOR THE FIRST TIME.— In Mateo's Personal Data Sheet (PDS), in years 1997 and 2000, on the item question if he has been convicted of any crime, he marked (x) for the NO answer. However, Mateo was previously convicted in 1976 for the crime of homicide, sentenced to penalty for *reclusion temporal* x x x which, pursuant to Article 41 of the *Revised Penal Code*, carried with it the accessory penalties of civil interdiction during the period of the sentence, and of ***perpetual absolute disqualification*** that he would suffer "*even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.*" Under Article 30 of the *Revised Penal Code*, the effects of the accessory penalty of perpetual absolute disqualification included the x x x deprivation and disqualification for public office or employment. x x x Under the previous and current rules on administrative cases, dishonesty and grave misconduct (for usurpation of authority committed) have been classified as *grave offenses* punishable by dismissal. These offenses reveal defects in the respondent official's character, affecting his right to continue in office, and are punishable by dismissal even if committed for the first time.

APPEARANCES OF COUNSEL

Alvarez Nuez Galang Espina and Lopez Law Offices for petitioner.

The Solicitor General for public respondents.

D E C I S I O N

BERSAMIN, *J.*:

The failure of a public servant to disclose in his personal data sheet (PDS) the fact of his conviction by final judgment of a crime punished with *reclusion temporal* is guilty of dishonesty, and may be dismissed from the service even if the charge is committed for the first time.

Antecedents

The petitioner was first employed on May 28, 1990 by the National Water Resources Board (NWRB) as Attorney IV. He was later on appointed as Executive Director of NWRB, and took his oath of office as such on January 29, 2002.

On April 4, 2003, 38 NWRB employees (respondents herein) lodged a complaint affidavit with the Presidential Anti-Graft Commission (PAGC) charging the petitioner with dishonesty, usurpation of authority and conduct prejudicial to the interest of the service.[1] They alleged therein that he had not disclosed the existence of a prior criminal conviction for homicide in his PDS on file with the NWRB; that he had approved and issued numerous water permits without or in excess of his authority, or in conflict with prior action by the Board; and that he had approved and issued certificates of public convenience without the certificates being first passed upon by the Board as a collegial body; that he had been indiscriminately reassigning personnel in complete disregard of their rank, status and safety to purposely dislocate them; and that he had acted without due process in certain disciplinary actions taken against subordinates.

Finding sufficient basis to commence an administrative investigation against the petitioner, the PAGC required him to file a counter-affidavit or answer to the complaint. He complied on May 26, 2003.[2]

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[1] *Rollo*, pp. 84-85.

[2] *Id*. at 86-90.

After the formal hearing, the PAGC ordered the parties to submit their respective memoranda or position papers on or before June 9, 2003. Only the respondents filed their memorandum/position paper.[3]

Findings of the PAGC

The PAGC issued its resolution dated June 25, 2003, whereby it found the petitioner administratively liable as charged.

On the allegation of falsification of the PDS, the findings of the PAGC were as follows:

> In Respondent Mateo's Personal Data Sheet, dated March 12, 1997 (Rollo, p. 629), Item No. 25 states that "Have you been convicted of any crime or violated any law, decree, ordinance or regulations by any court or tribunal?" The answer is a mark [x] on the printed box provided for the NO answer. Similarly, in Respondent's Personal Data Sheet, dated November 6, 2000, (Rollo, p. 630), Item No. 26, states that – "Have you ever been convicted of any crime or violation of any law, degree [sic], ordinance or regulations by any court or tribunal?" The answer is a mark [x] printed on the box provided for the NO answer.
>
> At this point, it must be stated that herein Respondent Mateo was charged of Homicide (Criminal Case No. 93594) before the Court of First Instance of Manila, now Regional Trial Court, Branch VIII. Subsequently, he was convicted of the same crime and sentenced on August 10, 1976 by the same court, to serve 6 years and 1 day imprisonment to a maximum of 14 years, 8 months and 1 day imprisonment and to pay an indemnity of ₱12,000.00 (Rollo, pp. 650-651). Thereafter, herein Respondent was granted conditional pardon by then President Ferdinand E. Marcos, on June 12, 1979. Respondent was then discharged from the New Bilibid Prison, Muntinlupa, Rizal, on July 1979.[4]

The PAGC observed that the penalty of *reclusion temporal* imposed on the petitioner included the accessory penalty of perpetual absolute disqualification from holding public office

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[3] *Id*. at 99.

[4] *Id*. at 100.

or employment; and that such accessory penalty remained even if the petitioner had been pardoned, unless the pardon expressly remitted such accessory penalty.[5] It went on to explain that although the records showed that he had been granted a conditional pardon, the terms of the pardon did not expressly restore his right to hold public office or to have public employment; hence, he was not eligible to be appointed to his posts in the NWPB. It concluded that his failure to disclose the truth in his PDS had constituted dishonest conduct prior to entering the government service and had caused undue injury to the Government; and that he should be dismissed from the service considering that his dishonesty, albeit not committed in the course of the performance of duty, had still affected his right to continue in office.[6]

Anent the charge of usurpation of authority, the PAGC indicated that Article 80 of the *Water Code of the Philippines* authorized the NWRB to deputize any official or government agency to perform any of its specific functions or activities;[7] that during its March 11, 2002 meeting, the Board had resolved as follows:

a. "to authorize the Executive Director to grant Temporary Permits for the appropriation of water pursuant to Section 26, Rule 1 of Implementing Rules and Regulations of the Water Code of the Philippines (PD 1067)" (Resolution No. 1313-A (As Amended))

b. "to grant authority to the Executive Director of NWRB to sign all decisions made by the Board." (Resolution No. 1424-A (As Amended))

c. "to authorize the Executive Director to pass upon application/ petition for power cost adjustment, using as guidelines Board Resolution No. 03-0591 provided that, the Board shall be informed of the action made on the matter. Provided, further

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[5] *Id*. at 101.

[6] *Id*. at 101-102.

[7] *Id*. at 104.

that the resulting Billing Multiplier shall not exceed 5%." (Resolution No. 01-0593-A (As Amended))

d. "to authorize the Executive Director to approve water permit applications for 0.05 lps and below excepting those applications for golf courses, industrial purposes, big projects and with formal oppositions or legal protests." (Resolution No. 02-0499-A) (As Amended)[8]

that the petitioner had issued Office Order No. 26 on September 11, 2002 stating in part that the Executive Director would be the official who would approve all Water Rights Permits and Certificates of Public of Convenience and Necessity by virtue of the failure of the Board to convene; that such approval was valid and had the same effect as if approved by the Board itself, subject to the confirmation by the Board once it reconvened legally; that from September 2002 to January 2003, he had signed and approved 324 water permit applications despite the applications exceeding the 0.05 LPS limit imposed by NWRB Resolution No. 02-0499-A; and that such acts constituted grave misconduct on his part.[9]

As to the allegation that the petitioner had reassigned personnel without authority, the PAGC considered the Office Orders dated February 6, 2002 and February 23, 2003, and the Memorandum dated February 3, 2003 as having been issued under the pretext of reorganization within the agency; that no such reorganization had been undertaken; that, consequently, he had taken upon himself to reassign and transfer the detail of certain office personnel without the approval of the Board; that such action had been in violation of the Civil Service Laws and Republic Act No. 6656; and that he had also suspended two employees for insubordination, but the suspensions were without legal basis without the Board's approval, pursuant to NWRB Resolution dated March 11, 2002.[10]

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[8] *Id*.

[9] *Id*. at 104-105.

[10] *Id*. at 106-107.

Opining that the narration of facts by the respondents as the complainants was substantial evidence adequate to support the conclusion that the petitioner was liable as charged, the PAGC recommended to the President that the penalty of dismissal from the service with forfeiture of retirement benefits and perpetual disqualification from reemployment in the government service be imposed on the petitioner.[11]

Ruling of the Office of the President (OP)

The matter was elevated to the OP, which rendered the resolution dated August 20, 2003 through Deputy Executive Secretary Arthur P. Autea, whereby the OP concurred with the findings and recommendation of the PAGC. The OP stated that the charge of dishonesty alone already warranted the dismissal of the petitioner from the service even if committed for the first time; and that he had actually committed dishonesty on two separate occasions by having falsely denied his conviction of any crime or violation of law by a competent court or tribunal[12] in the two PDSs filed in 1997 and 2000. Accordingly, it affirmed his dismissal from the service with forfeiture of retirement and all other benefits, observing that there was no need to decree his disqualification from reemployment in the government service because his perpetual disqualification stemming from his criminal conviction still stood.[13]

The petitioner sought reconsideration, claiming that he had been also granted an absolute pardon on May 27, 1987 by President Corazon C. Aquino; that he had relied in good faith on such absolute pardon completely erasing his criminal conviction, thereby removing the need for him to disclose his conviction in his PDSs; and that evidence had not been presented in his case because the PAGC did not conduct formal hearings.[14]

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[11] *Id*. at 109-110.

[12] *Id*. at 118.

[13] *Id*.

[14] *Id*. at 120.

The OP denied the motion for reconsideration, holding that the PAGC did actually conduct formal hearings in which the petitioner had been given the opportunity to be heard; that he had participated in the hearings by filing his verified answer to the complaint; that he had also been accorded the opportunity to submit his memorandum or position paper, but he had failed to do so;[15] that he had been silent about the absolute pardon granted by President Aquino on May 27, 1987, alleging it for the first time only in the motion for reconsideration; and that the pardon, being the private act of the President, must still be pleaded and proved by him as the person claiming to have been pardoned.[16]

Decision of the Court of Appeals (CA)

The petitioner appealed to the CA, docketed as CA-G.R. SP No. 80689, insisting that the OP and the PAGC had committed serious errors of fact and law; had exceeded their jurisdiction; and had gravely abused their discretion in not affording him his constitutional right to confront his accusers, thereby violating his right to administrative due process. He assailed the public respondents for recommending and ordering his dismissal without factual, legal, and evidentiary basis.[17]

The CA promulgated its assailed decision on October 30, 2006,[18] denying the petition for review and affirming the ruling of the OP. The CA held that the essence of administrative due process was an opportunity to be heard, or to explain one's side, or to seek the reconsideration of the action or ruling complained of;[19] that the petitioner had been given the opportunity

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[15] *Id*. at 120.

[16] *Id*. at 121.

[17] *Id*. at 133-134.

[18] *Id*. at 49-60; penned by Associate Justice Arturo G. Tayag (retired), and concurred in by Associate Justice Remedios A. Salazar-Fernando and Associate Justice Noel G. Tijam.

[19] *Id*. at 53.

to be heard; that the PAGC had conducted formal hearings in which he had submitted his verified answer to the complaint; that he had been ordered to submit his memorandum or position paper, but he had failed to do so; that the requirements of due process in administrative proceedings were not the same as those in judicial proceedings because the trial-type proceedings, with an opportunity for face-to-face confrontation, were not necessary in administrative proceedings; that it sufficed for a party to be afforded the ample opportunity to present his side;[20] that the penalty imposed on him had been based on the finding to the effect that he had been truly guilty of dishonesty, usurpation of authority and conduct prejudicial to the best interest of the service; that such factual findings by the OP in the exercise of its quasi-judicial function were to be generally accorded respect; and that the OP did not gravely abuse its discretion because the resolutions in question had not been issued arbitrarily or in disregard of the evidence on record.[21]

Issues

In this appeal, the petitioner raises the following issues, to wit:

A

THE RESPONDENTS RECOMMENDED AND/OR ORDERED THE DISMISSAL OF PETITIONER FROM PUBLIC SERVICE WITHOUT AFFORDING THE LATTER HIS CONSTITUTIONAL RIGHT TO CONFRONT HIS ACCUSERS AND WITHOUT AFFORDING HIM ADMINISTRATIVE DUE PROCESS.

B

THE RESPONDENTS RECOMMENDED AND/OR IMPOSED THE VERY HARSH PENALTY OF DISMISSAL FROM SERVICE WITHOUT VALID FACTUAL, LEGAL AND EVIDENTIARY BASIS.

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[20] *Id*. at 53-54.

[21] *Id*. at 55.

Ruling of the Court

The petition for review on *certiorari* lacks merit.

Firstly of all, the petitioner contends that the right to due process in administrative proceedings should include the right to confront his accusers; that he invoked his right to confrontation and sought a formal hearing through his motion for reconsideration in the OP; and that the violation of his rights rendered any evidence presented against him inadmissible.

We cannot uphold the contention of the petitioner. As the CA correctly pointed out, administrative due process simply means the opportunity to be heard or to explain one's side, or to seek a reconsideration of the action or ruling complained of. For him to insist on a formal trial-type hearing in which he could confront his accusers was bereft of legal basis considering that he had been duly notified of the complaint against him and of the formal hearings conducted by the PAGC. He had also filed his answer to the complaint and participated in the formal hearings. For sure, the trial-type hearing was not indispensable in administrative cases. The requirements of administrative due process were satisfied once the parties were afforded the fair and reasonable opportunity to explain their respective sides. The administrative agency could resolve the issues based solely on position papers, affidavits or documentary evidence submitted by the parties.[22]

Secondly, it is notable that the petitioner did not raise in his answer to the complaint the absolute pardon purportedly granted to him by President Aquino; that he did not also submit proof on the absolute pardon in the hearings held before the PAGC; that he did not file his memorandum or position paper despite being ordered to do so; and that he did not advert to the absolute pardon when the case had been elevated to the OP. Being the part plainly at fault, his unexplained failure to submit his evidence could not be counted against the PAGC.

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[22] *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 462, 472-473.

In reality, the petitioner's plea of good faith vis-à-vis the charge of dishonesty, in that the absolute pardon had led him to believe that he no longer needed to divulge the conviction in his PDSs, was unworthy of credence. For one, he was quite aware that the penalty meted on him upon his conviction was *reclusion temporal*, which, pursuant to Article 41 of the *Revised Penal Code*, carried with it the accessory penalties of civil interdiction during the period of the sentence, and of **perpetual absolute disqualification** that he would suffer "*even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon*." Under Article 30 of the *Revised Penal Code*, the effects of the accessory penalty of perpetual absolute disqualification included the following:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.

2. The deprivation of the right to vote in any election for any popular office or to be elected to such office.

3. **The disqualification for the offices or public employments and for the exercise of any of the rights mentioned**.

x x x x x x x x x

4. **The loss of all rights to retirement pay or other pension for any office formerly held**.

Although the petitioner submitted photocopies of supposed clearances from the National Bureau of Investigation (NBI) indicating that he had no criminal record, his silence about the absolute pardon granted on May 27, 1987 until he alleged it *for the first time* in his motion for reconsideration in the PAGC did not also substantiate his plea of good faith. The submitted documents were mere photocopies, and as such were bereft of faith and credit. Indeed, he did not suitably explain his silence about the absolute pardon considering that he must plead and prove such pardon due to its being the private act of the Chief Executive.[23] The failure to establish the absolute pardon in the

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[23] *Barroquinto v. Fernandez*, 82 Phil. 642, 646 (1949).

administrative proceedings held before the PAGC and the OP rendered the absolute pardon inadmissible for purposes of his administrative case, and effectively removed any legal obligation on the part of the CA to consider the effects of the purported absolute pardon in his case. Worthy to stress, too, is that this Court, not being a trier of facts, cannot but disallow the consideration of such factual issue of whether or not he had truly been granted the absolute pardon, for it can take cognizance only of questions of law.

Thirdly, the petitioner claims on the issue of usurpation of authority that there was absolutely no evidence showing that he had acted without any authority from the Board. To bolster this claim, he relies on the fact that the Board had not declared his acts as unauthorized; and on the fact that none of the members of the Board had brought any complaint against him in respect thereof. He posits that his approval of the water permit applications had been authorized by NWRB Resolution No. 02-0499-A.

The petitioner's claim is unwarranted. The PAGC and the OP both found that he had gone beyond his express authority in signing and approving the 324 applications for water permits on various dates, including September 5, 16, and 23, October 17, November 12, December 3, 12, and 18, 2002, and January 2 and 15, 2003.[24] They noted that, indeed, the applications he had approved had exceeded the 0.05 LPS limit imposed in Resolution No. 02-0499-A. His excess of the authority granted to him by the Board amounted to misconduct.

Fourthly, the petitioner argues that dismissal was a penalty too harsh where a lesser one would suffice. He prays that the Court should consider his 13 years of public service, and the fact that no graft charges had been filed against him. He reminds that he had been set to retire as early as in April 2004.

We do not find any reversible error in the CA's affirmance of the OP's imposition on him of the penalty of dismissal. Under

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[24] *Rollo,* p. 116.

the previous and current rules on administrative cases, dishonesty and grave misconduct have been classified as *grave offenses* punishable by dismissal.[25] These offenses reveal defects in the respondent official's character, affecting his right to continue in office, and are punishable by dismissal even if committed for the first time.[26]

Lastly, the petitioner has repeatedly insinuated that the administrative charge brought against him resulted out of the machinations of various powerful political personalities. This insinuation, even if accurate or true, has no bearing in the consideration and resolution of the legal question now squarely before us, which is whether or not the administrative charge against him was disposed of properly.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision and resolution promulgated by the Court of Appeals in CA-G.R. SP No. 80689 on October 30, 2006 and April 25, 2007, respectively; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

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[25] CSC Resolution No. 99-1936, Rule IV, Section 52, and CSC Resolution No. 1101502, Rule 10, Section 46.

[26] *Remolona v. Civil Service Commission*, G.R. No. 137473, August 2, 2001, 362 SCRA 304, 313.

THIRD DIVISION

[G.R. No. 200765. August 8, 2016]

DESIDERIO RANARA, JR., *petitioner, vs.* **ZACARIAS DE LOS ANGELES, JR.**, *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE LOWER COURTS, RESPECTED; CASE AT BAR.— Generally, the question of whether a person is a purchaser in good faith is a factual matter that generally will not be delved into by the Court as it is not a trier of facts. Factual findings of the trial court on the matter, especially if affirmed by the appellate court, are binding and conclusive upon the Court save for specific instances. However, none of the exceptions apply to the instant case.

APPEARANCES OF COUNSEL

Expedito B. Mapa for petitioner.
Rances & Rances for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated September 15, 2011 and Resolution[3] dated February 6, 2012 of the Court of Appeals (CA) in CA-G.R. CV No. 90099,

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[1] *Rollo*, pp. 8-21.

[2] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia, concurring; *id*. at 25-38.

[3] *Id*. at 39-40.

which affirmed the Decision[4] dated June 27, 2007 of the Regional Trial Court (RTC) of Naga City, Branch 62, in Civil Case No. RTC 2001-0345, insofar as it denied Desiderio Ranara, Jr.'s (petitioner) reimbursement for the purchase price and improvements on the land from Zacarias de los Angeles, Jr. (respondent).

Antecedent Facts

Sometime in October 1989, Leonor Parada (Parada) loaned from Zacarias de los Angeles, Sr. (Zacarias, Sr.) money amounting to ₱60,000.00 to finance her migration to Canada. It was agreed that the loan would be payable within a period of 10 years. At the same time, Zacarias, Sr. informed Parada that the money came from his son, the respondent. As security, Parada mortgaged a parcel of agricultural land which would eventually be covered by Original Certificate of Title (OCT) No. 10020. It was stipulated that the respondent would take possession of and farm the land as payment for the loan interest. Parada, thus, executed a Deed of Sale with Right to Repurchase dated October 26, 1989, during which time the OCT had not yet been issued.[5]

The respondent took possession of the land, paid taxes due and converted the forested portion into irrigated land, without objection from Parada.[6]

In 1991, OCT No. 10020 was issued in the name of Parada, who brought with her to Canada the original owner's duplicate copy when she left in 1992. Later, Parada gave the owner's duplicate to Zacarias Sr. upon reports that someone attempted to enter the land. Parada also requested her tenant from another parcel of land, Salvador Romero, to remit to the respondent

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[4] Rendered by Judge Antonio C. A. Ayo, Jr.; *id*. at 89-93.

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

[6] *Id*. at 27.

her share of the harvest for the years 1992 to 1994. She also sent $250.00 and ₱20,000.00.[7]

When Zacarias, Sr. fell sick in 2001, the respondent pleaded with Noel Parada (Noel), Parada's son, to repurchase the property to finance his father's hospital and medical bills. The respondent later wrote a letter to Parada demanding that she repurchase the property. Parada paid ₱40,000.00 delivered personally to Zacarias Sr. by Noel at the hospital. The respondent found the amount unacceptable and returned the ₱40,000.00 and along with ₱10,000.00[8] to Parada.[9]

On February 16, 2001, the respondent sold the land to the petitioner for ₱300,000.00. Two documents of sale were executed: 1) for the actual sale price of ₱300,000.00; and 2) for ₱130,000.00 to be used as basis for the computation of taxes, registration of the deed and transfer of ownership. The respondent then sent Parada a letter dated July 17, 2001, enforcing the Deed of Sale with Right of Repurchase giving her 15 days to repurchase the property. The Deed of Absolute Sale with the purchase price of ₱150,000.00 between the petitioner and the respondent was signed on December 10, 2001.[10]

Parada insisted, in her response to the letter dated July 17, 2001, that there was no *pacto de retro* sale and then tendered ₱60,000.00 as payment for the loan, but it was refused by the respondent. She also learned that the respondent fraudulently registered with the Register of Deeds of Camarines Sur the Deed of Sale with Right to Repurchase, falsified the Affidavit of Seller/Transferor and that the respondent sold the property to the petitioner.[11]

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[7] *Id.*

[8] Half of the additional ₱20,000.00 Parada gave to Zacarias Sr. for his son's wedding.

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

[10] *Id.* at 45.

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

After exerting all efforts to settle and to no avail, Parada filed a Complaint[12] against the petitioner and the respondent for Reformation of Instrument, Consignation, Recovery of Possession with a Prayer for a Writ of Preliminary Mandatory Injunction and Damages.

In his Answer with Cross-Claim and Counterclaim,[13] the petitioner denied any knowledge of any defect in the title of the property since the respondent was in the possession of and cultivating the land. The petitioner claimed that he is an innocent purchaser for value. The petitioner also claimed that aside from paying the purchase price of ₱300,000.00, he had introduced permanent improvements on the property amounting to ₱150,000.00 consisting of deep-well irrigation facilities and another ₱150,000.00 for levelling portions of the property and converting the same to rice land. The petitioner prayed that if the case be resolved in favor of Parada, he be reimbursed by the respondent for his actual expenses plus the legal rate of interest.

For his part, the respondent insisted that the contract he entered with Parada was one of sale. He claimed that he introduced the improvements in the property and sought reimbursement for the same. Moreover, the respondent claimed that the petitioner failed to pay the full purchase price of the property and still owed him a balance of ₱50,000.00 and took advantage of his lack of education and dire need of money.[14]

Ruling of the RTC

In its Decision[15] dated June 27, 2007, the RTC ruled in favor of Parada. It found that Parada and the respondent entered into an equitable mortgage pursuant to Article

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[12] *Id.* at 46-51.

[13] *Id.* at 54-58.

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

[15] *Id.* at 89-93.

1602(6)[16] of the Civil Code. It denied the petitioner and the respondent's claim for reimbursement from Parada. Moreover, the RTC ruled that the petitioner did not have any privity of contract between Parada and the respondent. Article 1616 of the Civil Code specifically provides that the vendor a retro's obligation to reimburse useful and necessary expenses only pertains to the vendee a retro.[17]

With respect to the counterclaim and cross-claim of the petitioner, the RTC dismissed the same. It stated that when the petitioner purchased the land from the respondent, he knew of the property's status. He knew that he was dealing with a registered land and the fact that title to the land reflected Parada as the owner. The petitioner knew of the risks involved but continued with the sale. The RTC stated that "[h]e who comes to Court must have clean hands. Each of the parties must bear his own loss."[18] It denied the petitioner's claim of reimbursement for the improvements he had allegedly introduced in the land because he acquired the property in bad faith.[19]

Ruling of the CA

In its Decision[20] dated September 15, 2011, the CA affirmed the RTC's decision respecting the denial of the petitioner's counterclaim and cross-claim. It, thus, affirmed that the petitioner was a buyer in bad faith and was not entitled to reimbursement since the water pump that he introduced

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[16] Art. 1602. The contract shall be presumed to be an equitable mortgage, in any of the following cases:

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(6) In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure the payment of a debt or the performance of any other obligation.

[17] *Rollo*, p. 92.

[18] *Id*.

[19] *Id*.

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

was a useful expense. Under Article 546[21] of the Civil Code, only possessors in good faith are entitled to reimbursement of useful expenses. In addition, there were no receipts shown to substantiate the claim for the other improvements he allegedly introduced to the land. With respect to the reimbursement of the purchase price, the CA agreed with the RTC when it stated that the petitioner did not come to the court with clean hands and, thus, must bear his own loss and as such is not entitled to reimbursement of the purchase price.[22]

Hence, the petitioner filed the present petition asserting that the CA committed an error and claiming that he is entitled to reimbursement from the respondent.[23] He reiterates that he was an innocent purchaser for value. He entered into the contract of sale fully believing that the respondent was the actual owner of the property and had the legal capacity to dispose of the property.[24] Even assuming that he was in bad faith, the respondent was equally in bad faith when he sold the property to him, thus as between them, they should be construed to be in good faith and under the principle of *in pari delicto*. The petitioner argues that the respondent should be made to reimburse the purchase price and the value of the improvements he had introduced to the land.[25]

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[21] Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

[22] *Rollo*, pp. 32-33.

[23] *Id*. at 16.

[24] *Id*. at 17.

[25] *Id*. at 19.

Ruling of the Court

The Court denies the petition.

Generally, the question of whether a person is a purchaser in good faith is a factual matter that generally will not be delved into by the Court as it is not a trier of facts.[26] Factual findings of the trial court on the matter, especially if affirmed by the appellate court, are binding and conclusive upon the Court save for specific instances.[27] However, none of the exceptions apply to the instant case.

Here, both the RTC and CA have ruled that the petitioner and the respondent are both in bad faith and such finding is binding on the Court since none of the exceptions warranting the Court's review are availing.

In any event, the Court agrees with the courts *a quo* that the petitioner was in bad faith in purchasing the land since it was his duty to investigate. A purchaser of land that is in the actual possession of the seller must make some inquiry in the rights of the possessor of the land. The rule of *caveat emptor* requires the purchaser to be aware of the supposed title of the vendor and one who buys without checking the vendor's title takes all the risks and losses consequent to such failure.[28]

Likewise, the question of whether the parties are *in pari delicto* is a factual question and is generally not within the scope of a Rule 45 petition.[29] Further, the Court had elaborated on the applicability of the doctrine particularly in the case of *Constantino, et al. v. Heirs of Pedro Constantino, Jr.*[30] where it stated:

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[26] *Sigaya v. Mayuga*, 504 Phil. 600, 611 (2005).

[27] *Id*.

[28] *Dacasin v. CA*, 170 Phil. 175, 182-183 (1977).

[29] *Menchavez v. Teves, Jr.*, 490 Phil. 268, 281 (2005).

[30] 718 Phil. 575 (2013).

Latin for "in equal fault," *in pari delicto* connotes that two or more people are at fault or are guilty of a crime. Neither courts of law nor equity will interpose to grant relief to the parties, when an illegal agreement has been made, and both parties stand *in pari delicto*. Under the *pari delicto* doctrine, the parties to a controversy are equally culpable or guilty, they shall have no action against each other, and it shall leave the parties where it finds them. This doctrine finds expression in the maxims "*ex dolo malo non oritur actio*" and "*in pari delicto potior est condition defendentis*."

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As a doctrine in civil law, the rule on *pari delicto* is principally governed by Articles 1411 and 1412 of the Civil Code, which state that:

> Article 1411. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being *in pari delicto*, they shall have no action against each other, and both shall be prosecuted.
>
> x x x x x x x x x
>
> Article 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
>
> x x x x x x x x x
>
> 1. When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
>
> x x x x x x x x x

The petition at bench does not speak of an illegal cause of contract constituting a criminal offense under Article 1411. Neither can it be said that Article 1412 finds application although such provision which is part of Title II, Book IV of the Civil Code speaks of contracts in general, as well as contracts which are null and void *ab initio* pursuant to Article 1409 of the Civil Code — such as the subject contracts, which as claimed, are violative of the mandatory provision of the law on legitimes.

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Finding the inapplicability of the *in pari delicto* doctrine, We find occasion to stress that **Article 1412 of the Civil Code that breathes life to the doctrine speaks of the rights and obligations of the parties to the contract with an illegal cause or object which does not constitute a criminal offense.** It applies to contracts which are void for illegality of subject matter and not to contracts rendered void for being simulated, or those in which the parties do not really intend to be bound thereby. Specifically, *in pari delicto* situations involve the parties in one contract who are both at fault, such that neither can recover nor have any action against each other.[31] (Citations omitted and emphasis ours)

Here, there is neither an illegal cause nor unlawful cause which would necessitate the application of Articles 1411 and 1412 of the Civil Code. The petitioner is mistaken in the application of the doctrine of *in pari delicto*.

The Court agrees with the courts *a quo* that the petitioner cannot claim reimbursement for any expense incurred in the improvements on the lot.

WHEREFORE, the petition is **DENIED**. The Decision dated September 15, 2011 and Resolution dated February 6, 2012 of the Court of Appeals, in CA-G.R. CV No. 90099, are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Jardeleza, JJ.,* concur.

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[31] *Id.* at 584-587.

THIRD DIVISION

[G.R. No. 220023. August 8, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **DARIO TUBORO *y* RAFAEL,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDING OF TRIAL COURT THEREON, RESPECTED.—** The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.

2. **CRIMINAL LAW; RAPE; GUIDING PRINCIPLES.—** To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When

the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY THE DISCREPANCIES IN TESTIMONY REGARDING THE EXACT DATE OF THE ALLEGED RAPE.—** [T]he discrepancies in AAA's testimony regarding the exact date of the alleged rape subject of this case are inconsequential, immaterial, and cannot discredit her credibility as a witness. We held that the date of the rape need not be precisely proved, considering that it is not a material element of the offense. It is sufficient that the Information alleges that the crime was committed on or about a specific date. What is decisive in a rape charge is that the commission thereof by the accused-appellant has been sufficiently proven.

4. **ID.; ID.; ID.; CATEGORICAL TESTIMONY ABSENT ILL-MOTIVE PREVAILS OVER DEFENSE OF DENIAL.—** Alleged motives of family feuds, resentment, or revenge are not uncommon defenses in rape cases, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her testimony. x x x Besides, no woman would cry rape, allow an examination of her private parts, subject herself and even her entire family to humiliation, go through the rigors of public trial, and taint her good name if her claim were not true. x x x The Court notes that the direct, positive and categorical testimony of AAA, absent any showing of ill-motive, prevails over Dario's defense of denial.

5. **CRIMINAL LAW; RAPE; AN INTACT HYMEN DOES NOT NEGATE A FINDING OF RAPE.—** It has been invariably held that an intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even the briefest of contacts and without rupture or laceration of the hymen, is enough to justify a conviction for rape. In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.

6. **ID.; ID.; PENALTY AND CIVIL LIABILITY.—** [T]he RTC and the CA correctly prescribed the penalty of *reclusion perpetua*

for the simple rape committed by Dario. With regard to his civil liability, the CA ruling is modified. Consistent with the latest case of *People v. Ireneo Jugueta,* he is now ordered to pay AAA civil indemnity *ex delicto*, moral and exemplary damages in the amount of ₱75,000.00 each. Civil indemnity is mandatory upon the finding of the fact of rape. Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof. When a crime is committed with a qualifying or generic aggravating circumstance, an award of exemplary damages is justified under Article 2230 of the New Civil Code. Exemplary damages is awarded to set a public example and to protect hapless individuals from sexual molestation. Lastly, interest at the rate of six percent (6%) *per annum* is imposed on all the amounts awarded in this case, from the date of finality of this judgment until the damages are fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, ***J.*:**

This is an appeal from the June 19, 2013 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 04745, the dispositive portion of which states:

WHEREFORE, the appeal is **DENIED**. The decision dated July 12, 2010, rendered by the Regional Trial Court of Antipolo City, Br. 72, finding accused-appellant Dario Tuboro y Rafael guilty beyond reasonable doubt for the crime of rape defined and penalized under Article 335 of the Revised Penal Code in relation to Sections 5 and

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[1] Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Magdangal M. De Leon and Stephen C. Cruz, concurring; *rollo*, pp. 2-13.

3 (a) of Republic Act No. 7610, otherwise known as "Special Protection of Children Against Abuse, Exploitation and Discrimination Act" (RA 7610), is **AFFIRMED WITH MODIFICATION**. Accused-appellant shall pay the victim AAA moral damages in the amount of ₱50,000.00 and civil indemnity in the amount of ₱50,000.00.

SO ORDERED.[2]

On February 24, 1997, accused-appellant Dario Rafael Tuboro (*Dario*) was charged with rape under Article 335 of the Revised Penal Code (*RPC*), in relation to Sections 5 and 3 (a) of Republic Act No. 7610. The accusatory portion of the Information reads:

> That [on] or about and sometime in the month of November, 1996, in the Municipality of Antipolo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused[,] armed with a kitchen knife, by means of force, violence and intimidation, did, then and there, wilfully, unlawfully and feloniously have carnal knowledge of the said complainant [AAA], a child over twelve (12) years old but less than eighteen (18) years of age, against the latter's will and consent.[3]

During his arraignment on January 30, 2001, Dario pleaded not guilty.[4] Pre-trial was deemed terminated upon agreement of the prosecution and the defense.[5] Trial ensued while Dario was under detention. Aside from AAA, the prosecution presented Ireneo T. Melgar, Emma Melgar, and Dr. Valentin Bernales. Only Dario testified for the defense.

AAA testified that Dario is the brother-in-law of her father, Ireneo T. Melgar. She could not recall the specific date when she was raped, but it occurred when Susan Tuboro, Dario's wife, invited her over their house in Sitio Bulao, Cainta, Rizal. With the permission of Ireneo, she agreed to come as she was told by her aunt that her uncle was not there. The following

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[2] *Id.* at 12-13. (Emphasis in the original)

[3] Records, p. 1.

[4] *Id.* at 45.

[5] *Id.*

day, however, Dario arrived while Susan left early for work. AAA was sleeping alone when at dawn she was awakened and was surprised to see him lying beside her. He placed himself on top of her and removed her panty. She punched him, but he still succeeded in using her. He held her two hands and boxed her in the chest. After the detestable act was done, AAA could do nothing but cry. She was only fourteen (14) years old at the time, having been born on February 27, 1982.

Previously, in April and October 1996, Dario also sexually abused AAA several times in her father's house in Payatas, Quezon City. At the time, he and Susan, together with their three children, were living in the house of Ireneo, who was residing in Antipolo City together with his new wife. AAA's paternal grandmother, Crisanta Melgar, also used to stay in Payatas, but she was in Bicol from April to October 1996. AAA's mother was staying in Las Piñas with AAA's sister. AAA stated that she was raped three times in Payatas in April 1995, but she could not recall the exact dates. What she could only remember was that the first one took place while she was alone with Dario while Susan was at work and her cousins went to Bicol due to the death of Ireneo's sibling; a week after, she was raped again in the evening while Susan was in Bicol; and that the third incident, before she graduated from elementary, occurred in the early morning while Susan was at work and her cousins left for Bicol.

As to the alleged rape incidents in Payatas, AAA admitted that she did not tell anybody what happened because Dario threatened to kill her. He actually threatened her before she was raped for the first time by pointing a knife at her. She did not leave the house in Payatas because she had nobody to turn to. Her grandmother was in Bicol and she did not know where her father was living in Antipolo or where her mother was staying with her own family. She did not take steps to write them as she was confused. Even if she had seen her father between April and October 1996, as the latter had visited Payatas to give her educational support, they did not talk to each other because, aside from Dario's threat, they were not close to each other since she turned 11 years old. Although she was free to go

where she wanted to, she also did not know where the barangay hall was.

Ireneo testified that he filed a complaint because AAA told his sister, Susan, on November 15, 1996 that she was raped by Dario. When he learned this from his sisters, Rosie and Alice, sometime in December 1996, he and AAA went to Karangalan Police Station on December 27, 1996 and gave their sworn statements. Days prior, Ireneo's mother, Crisanta, who arrived from Bicol, brought AAA to Alice's residence where she started to talk about what happened between her and Dario. Thereafter, Rosie and Alice accompanied AAA to the National Bureau of Investigation (*NBI*). Ireneo was informed of the rape when Crisanta and Alice reported the incident to the NBI, and on December 25, 1996 when Crisanta went to his house and told him not to worry anymore since the person who raped his daughter was already incarcerated.

Ireneo recalled that Susan went to his house on December 15, 1996, during the baptism of his child, and asked for AAA to go with her in a reunion with her (AAA) cousins who just arrived from Bicol. He did not allow her. The next day, AAA went to Susan's house without his permission. She returned three days after. In December 18, 1996, Susan told Ireneo that AAA was raped by someone unknown to her (Susan). He then asked her daughter if it is true, but she did not answer, just looked (*tulala*), and did not want to speak.

As to other pertinent matters, Ireneo related that AAA resided in Payatas in 1995 and in Antipolo in 1996. She started living in Payatas since she was in Grade 2 or when she was about 8 years old. After her elementary graduation in 1996, she was sent to a school in Antipolo. She would transfer to Susan's house once in a while to eat and to look after the latter's children. Ireneo knew this because he would visit Crisanta to bring their supply every Saturday. He also observed that AAA had poor grades in school. He was even summoned by the principal as a result.

At the time Ireneo testified in court, he shared that they could not seriously talk to AAA everytime she hears about the

case. She was traumatized. He already brought her to a physician for her continued medication.

Emma Melgar knew Dario since he is the brother-in-law of her husband, Salvador Melgar, who, in turn, is the brother of Ireneo. She testified that in October and November 1996, she and her family were residents of Munting Dilaw, Cainta, Rizal; that Susan, Dario and their children were staying at a house built at the back of their house; and that AAA was also sleeping at Susan's place. Emma recollected that on the same period, she saw Susan and AAA seriously talking in front of their house but she did not hear their conversation. When she asked Susan what it was all about, the latter replied that AAA was pregnant and that she already subjected her to a *hilot*. Emma admitted that she did not know of any rape incident involving Dario and AAA, who did not tell her that such crime happened in their house in Munting Dilaw.

For the defense, Dario claimed that, from February to July 1996, his entire family was staying with his brother, Allan Tuboro, in Pasig City because they already sold their house in Payatas. He denied raping AAA in April 1996 in Payatas, since he was at work at the time and in October 1996 in Payatas because he was in Dagupan. He also repudiated the alleged rape in November 1996 in Sitio Bulao, but offered no explanation. Dario believed that this criminal case is purely a harassment suit. He argued that Ireneo and his in-laws were mad at him as they want him to be separated from and be abandoned by Susan. He asserted that Ireneo talked to AAA to file the case against him.

After trial, the RTC convicted Dario of the crime charged. The dispositive portion of the July 12, 2010 Decision[6] states:

WHEREFORE, finding the accused DARIO TUBORO *y* RAFAEL **GUILTY** beyond reasonable doubt for the crime of Rape defined and penalized under Article [335] of the Revised Penal Code, in

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[6] *Id.* at 302-313; CA *rollo*, pp. 18-29.

relation to Secs. 5 and 3 (a) of R.A. 7610[.] [He] is hereby ordered to suffer the penalty of Reclusion Perpetua.

SO ORDERED.[7]

The trial court noted that AAA, who was placed in the witness stand eight times, was subjected to a "very lengthy and exhaustive" cross-examination. Even if there were some discrepancies about the rape incidents that were committed against her by Dario in Payatas, AAA was consistent with the rape incident that occurred at the house of her aunt Susan in Sitio Bulao. Likewise, while there was a conflicting testimony on the part of AAA as to when the rape incident happened in Sitio Bulao, she was still able to recall it in relation to the time frame alleged in the Information, which was also supported by the testimony of Emma. The trial court ruled that, consistent with jurisprudence, the date is not an essential element of the crime of rape since the gravamen of the offense is carnal knowledge of a woman. Moreover, Dario's imputation of ill motive on the part of AAA was not given weight for lack of sufficient corroborative evidence. Finally, the trial court considered the finding of the medico-legal officer that even if the hymen of AAA is intact it is distensible such that a calibrated test tube was able to pass through the hymenal canal without producing any injury. In any case, it was stressed that medical findings of injuries or hymenal lacerations in the victim's genitalia are not essential elements of rape.

On appeal, Dario's conviction was sustained, as the CA opined that there is no justifiable ground to doubt AAA's credibility. For the appellate court, the discrepancies in her testimony were only with respect to the events surrounding the sexual assaults allegedly committed in Payatas, which were outside the jurisdiction of the trial court. In contrast, the rape committed against AAA in Sitio Bulao was rebutted only by a denial that was not buttressed by strong evidence of non-culpability. Lastly, the CA did not give credence to Dario's claim that this was

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[7] *Id.* at 313; *id.* at 29. (Emphasis in the original)

merely a harassment suit due to his failure to present convincing evidence that AAA's family had a grudge against him.

Now before Us, Dario manifests that he would no longer file a Supplemental Brief and moves that the Appellant's Brief he filed before the CA be adopted.[8]

The appeal is dismissed.

The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case.[9] Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.[10] Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[11]

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that

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[8] *Rollo*, p. 30.

[9] *People v. Padilla*, 617 Phil. 170, 183 (2009); *People v. Lopez,* 617 Phil. 733, 744 (2009); and *People v. Eliseo D. Villamor,* G.R. No. 202187, February 10, 2016.

[10] *People v. Padilla*, *supra,* at 183.

[11] *People v. Lopez, supra* note 9, at 744; *People v. Madsali, et al.*, 625 Phil. 431, 451 (2010); and *People v. Eliseo D. Villamor, supra* note 9.

in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[12] Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony.[13] When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.[14]

Upon review of the entire case records, there is no showing that either the trial court or the appellate court committed any error in law and findings of fact. The perceived defects and contradictions by the defense refer only to minor and insignificant details which do not work to alter the outcome of the case.

The Court shall separately rule on the issues raised as follows:

1. AAA failed to recall the specific dates of the incidents of rape.

While AAA admitted that she could not remember the exact month when she was raped by Dario, We agree that she could exactly remember what he had done to her. In fact, even Dario admitted in his Brief that AAA relayed the details of the alleged molestation in Sitio Bulao although she could not remember when it happened.[15] AAA conceded that she was not in her proper senses when she gave the statement to the Antipolo Police Station on December 27, 1996; that she was confused at the time; and that she was already worried because of the trouble

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[12] *People v. Padilla*, *supra* note 9, at 182-183.

[13] *Id.* at 183; *People v. Madsali, et al.*, *supra* note 11, at 447; and *People v. Eliseo D. Villamor, supra* note 9.

[14] *People v. Madsali, et al.*, *supra* note 11, at 447.

[15] CA *rollo*, p. 54.

she was causing her family.[16] These are but understandable natural reactions coming from a minor victim who sadly experienced repeated sexual abuse from a relative. Nonetheless, the discrepancies in AAA's testimony regarding the exact date of the alleged rape subject of this case are inconsequential, immaterial, and cannot discredit her credibility as a witness. We held that the date of the rape need not be precisely proved, considering that it is not a material element of the offense.[17] It is sufficient that the Information alleges that the crime was committed on or about a specific date.[18] What is decisive in a rape charge is that the commission thereof by the accused-appellant has been sufficiently proven.[19]

2. Being a patient of the National Center for Mental Health, AAA's qualification as a witness is questionable as her capacity to perceive and make known her perception is very limited;

Dario is estopped from assailing the mental state of the victim, because during the hearing on May 23, 2005, after AAA was presented as a witness, the prosecution and the defense stipulated[20] that she is sane, in good condition, and qualified to testify. By reason thereof, the supposed testimony of Dr. Joy Tabanda Manzo was dispensed with.

3. AAA willingly went back to his house despite her allegation that she was previously molested by him in Payatas.

What is glaring from the records is that AAA innocently relied on Susan's representation before she agreed to go with her. She was assured that Dario was not in their house. Even prior to sleeping that night, she inquired about his whereabouts, as to which Susan replied that he was a stay-in in Dagupan.[21]

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[16] TSN, April 19, 2004, pp. 8, 10-11.

[17] *People v. Butiong*, 675 Phil. 621, 629 (2011).

[18] *People v. Santos*, 452 Phil. 1046, 1064 (2003).

[19] *People v. Matugas*, 427 Phil. 696, 719 (2002).

[20] Records, p. 179.

[21] TSN, August 24, 2004, p. 12.

Unfortunately, Dario arrived the day after. Despite AAA's testimony, Susan was not presented by the defense to dispute the same.

4. Prior to his indictment, the victim's family harbored a grudge against him.

Alleged motives of family feuds, resentment, or revenge are not uncommon defenses in rape cases, and have never swayed the Court from lending full credence to the testimony of a complainant who remained steadfast throughout her testimony.[22] Here, We agree with the trial and appellate courts that, based on his own testimony, Dario manifestly failed to provide evidence supporting his claim that AAA was only instigated by her parents and his in-laws to file a case against him. Besides, no woman would cry rape, allow an examination of her private parts, subject herself and even her entire family to humiliation, go through the rigors of public trial, and taint her good name if her claim were not true.[23]

5. The absence of injury to AAA's hymen belied the supposed force that attended the alleged numerous sexual assaults against her.

Dario is mistaken. Dr. Bernales, the NBI medico-legal officer who examined AAA, clarified:

PROSECUTOR LUNA:

Earlier, you made mention about the fact that the hymen is intact, what do you mean by that?

A: It means that the whole length of the hymen has no injuries and the continuity of the whole circumference of the hymen has no injuries.

Q: Doctor, in your field as an expert, may I ask your opinion[,] [is there a] possibility that the hymen of a victim will still

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[22] See *People v. Prodenciado,* G.R. No. 192232, December 10, 2014, 744 SCRA 429, 451.

[23] *People v. Padilla*, *supra* note 9, at 184.

remain intact despite the fact that an actual penetration of a male organ into the vagina?

A: Well, **based on the characteristics of this hymen which is distensible, and upon the introduction of a calibrated test tube which allows the test tube to [pass] through the hymenal canal without producing any hymenal injury so[,] therefore[,] it can allow an average fully erected penis of a Filipino male without producing any injuries.**

Q: You mean not necessarily damaging the hymen, Doctor?

A: Yes, sir.[24]

It has been invariably held that an intact hymen does not negate a finding that the victim was raped.[25] Penetration of the penis by entry into the lips of the vagina, even the briefest of contacts and without rupture or laceration of the hymen, is enough to justify a conviction for rape.[26] In addition, a medical examination and a medical certificate are merely corroborative and are not indispensable to the prosecution of a rape case.[27]

The Court notes that the direct, positive and categorical testimony of AAA, absent any showing of ill-motive, prevails over Dario's defense of denial.[28] As the lower courts found, his defenses are weak and unconvincing. Like alibi, denial is an inherently weak and easily fabricated defense.[29] It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony

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[24] TSN, July 8, 2003, pp. 8-10 (Emphasis supplied).

[25] *People v. Pangilinan*, 676 Phil. 16, 32 (2011).

[26] *People v. Court of Appeals,* G.R. No. 183652, February 25, 2015, 751 SCRA 675, 710 and *People v. Felipe Bugho y Rompal a.k.a. "Jun the Magician,"* G.R. No. 208360, April 6, 2016.

[27] *People v. Evangelio, et al.*, 672 Phil. 229, 245 (2011).

[28] See *People v. Padilla*, *supra* note 9, at 185; *People v. Madsali, et al.*, *supra* note 11, at 446; and *People v. Eliseo D. Villamor, supra* note 9.

[29] *People v. Madsali, et al.*, *supra* note 11, at 446 and *People v. Eliseo D. Villamor, supra* note 9.

of a credible witness.[30] While he denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal. He neither established his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime nor presented a single witness to stand in his favor.[31]

As to the sentence imposed, the RTC and the CA correctly prescribed the penalty of *reclusion perpetua* for the simple rape committed by Dario. With regard to his civil liability, the CA ruling is modified. Consistent with the latest case of *People v. Ireneo Jugueta,*[32] he is now ordered to pay AAA civil indemnity *ex delicto*, moral and exemplary damages in the amount of ₱75,000.00 each. Civil indemnity is mandatory upon the finding of the fact of rape.[33] Moral damages in rape cases should be awarded without need of showing that the victim suffered trauma or mental, physical, and psychological sufferings constituting the basis thereof.[34] When a crime is committed with a qualifying or generic aggravating circumstance, an award of exemplary damages is justified under Article 2230 of the New Civil Code.[35] Exemplary damages is awarded to set a public example and to protect hapless individuals from sexual molestation.[36] Lastly, interest at the rate of six percent (6%) *per annum* is imposed

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[30] *People v. Lopez, supra* note 9, at 745 and *People v. Madsali, et al.*, s*upra* note 11, at 446.

[31] See *People v. Eliseo D. Villamor, supra* note 9.

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

[33] *People v. Cedenio*, G.R. No. 201103, September 25, 2013, 706 SCRA 382, 386-387 and *People v. Tejero*, 688 Phil. 543, 558 (2012).

[34] *People v. Cabungan*, 702 Phil. 177, 189 (2013).

[35] *Id.* at 190; *People v. Cruz*, 714 Phil. 390, 400 (2013); and *People v. Tejero*, *supra* note 33, at 559.

[36] *People v. Umanito,* G.R. No. 208648, April 13, 2016 (3rd Division Resolution).

on all the amounts awarded in this case, from the date of finality of this judgment until the damages are fully paid.[37]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The June 19, 2013 Decision of the Court of Appeals in CA-G.R. CR-HC No. 04745 is **AFFIRMED WITH MODIFICATION**. Appellant Dario Rafael Tuboro is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. Further, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this judgment until the damages are fully paid.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 220998. August 8, 2016]

HOLCIM PHILIPPINES, INC., *petitioner, vs.* **RENANTE J. OBRA,** *respondent.*

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[37] Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 5, 2015.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; VIOLATION OF COMPANY RULES MUST BE SO GROSS AS TO DESERVE THE PENALTY OF DISMISSAL; CASE AT BAR.— There is no question that the employer has the inherent right to discipline, including that of dismissing its employees for just causes. This right is, however, subject to reasonable regulation by the State in the exercise of its police power. Accordingly, the finding that an employee violated company rules and regulations is subject to scrutiny by the Court to determine if the dismissal is justified and, if so, whether the penalty imposed is commensurate to the gravity of his offense. x x x [Here,] respondent's misconduct is not so gross as to deserve the penalty of dismissal from service. As correctly observed by the NLRC, while there is no dispute that respondent took a piece of wire from petitioner's La Union Plant and tried to bring it outside the company premises, he did so in the belief that the same was already for disposal. x x x Respondent has also shown remorse for his mistake, pleading repeatedly with petitioner to reconsider the penalty imposed upon him. x x x [R]espondent deserves compassion and humane understanding more than condemnation, especially considering that he had been in petitioner's employ for nineteen (19) years already, and this is the first time that he had been involved in taking company property, which item, at the end of the day, is practically of no value. Besides, respondent [as packhouse operator] did not occupy a position of trust and confidence, the loss of which would have justified his dismissal over the incident.

2. ID.; ID.; SERIOUS MISCONDUCT; DISCUSSED.— Neither can respondent's infraction be characterized as a serious misconduct which, under Article 282 (now Article 297) of the Labor Code, is a just cause for dismissal. Misconduct is an improper or wrong conduct, or a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for dismissal within the text and meaning of Article 282 (now Article 297) of the Labor Code, the employee's misconduct

must be serious, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant, as in this case where the item which respondent tried to takeout was practically of no value to petitioner.

3. ID.; ID.; ILLEGAL DISMISSAL; SEPARATION PAY IN LIEU OF REINSTATEMENT NOT PROPER AS STRAINED RELATIONS NOT ESTABLISHED; BACKWAGES NOT PROPER AS EMPLOYEE WAS NOT ENTIRELY FAULTLESS AND SHOULD NOT PROFIT FROM A WRONGDOING.— Based on the circumstances of this case, respondent's dismissal was not justified. x x x As a general rule, an illegally dismissed employee is entitled to: (*a*) reinstatement (or separation pay, if reinstatement is not viable); and (*b*) payment of full backwages. In this case, the Court cannot sustain the award of separation pay in lieu of respondent's reinstatement on the bare allegation of the existence of "strained relations" between him and the petitioner. x x x It is imperative, that strained relations be demonstrated as a fact and adequately supported by substantial evidence showing that the relationship between the employer and the employee is indeed strained as a necessary consequence of the judicial controversy. x x x [A]nent the propriety of awarding backwages, the Court observes that respondent's transgression — even if not deserving of the ultimate penalty of dismissal — warrants the denial of the said award following the parameters in *Integrated Microelectronics, Inc. v. Pionilla.* In that case, the Court ordered the reinstatement of the employee without backwages on account of the following: (*a*) the fact that the dismissal of the employee would be too harsh a penalty; and (*b*) that the employer was in good faith in terminating the employee, x x x Respondent here was not entirely faultless and therefore, should not profit from a wrongdoing.

APPEARANCES OF COUNSEL

Siguion Reyna, Montecillo & Ongsiako for petitioner.
Gacod & Musico Law Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*,[1] filed by petitioner Holcim Philippines, Inc. (petitioner), assailing the Decision[2] dated February 13, 2015 and the Resolution[3] dated September 7, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 136413, which affirmed the Decision[4] dated March 31, 2014 and the Resolution[5] dated April 30, 2014 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 03-000696-14(8) / NLRC CN. RAB-I-09-1102-13(LU-1), holding that respondent Renante J. Obra (respondent) was illegally dismissed and, thereby, ordering petitioner to pay him separation pay amounting to ₱569,772.00 in lieu of reinstatement.

The Facts

Respondent was employed by petitioner as packhouse operator in its La Union Plant for nineteen (19) years, from March 19, 1994[6] until August 8, 2013.[7] As packhouse operator, respondent ensures the safe and efficient operation of rotopackers, auto-

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[1] *Rollo,* pp. 10-47.

[2] *Id*. at 54-63. Penned by Associate Justice Normandie B. Pizarro with Associate Justices Samuel H. Gaerlan and Zenaida T. Galapate-Laguilles concurring.

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

[4] *Id*. at 124-130. Penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Alex A. Lopez concurring. Commissioner Pablo C. Espiritu, Jr. was on leave.

[5] *Id*. at 132-133. Penned by Commissioner Gregorio O. Bilog III with Presiding Commissioner Alex A. Lopez, concurring and Commissioner Pablo C. Espiritu, Jr., taking no part.

[6] *Id*. at 55 and 125.

[7] The effective date of respondent's dismissal from service per the Decision/ Resolution Memo. See *id*. at 192-195.

bag placers, and cariramats, as well as their auxiliaries.[8] At the time of his dismissal, he was earning a monthly salary of ₱29,988.00.[9]

On July 10, 2013, at around 4 o'clock in the afternoon, respondent was about to exit Gate 2 of petitioner's La Union Plant when the security guard on duty, Kristian Castillo (Castillo), asked him to submit himself and the backpack he was carrying for inspection.[10] Respondent refused and confided to Castillo that he has a piece of scrap electrical wire in his bag.[11] He also requested Castillo not to report the incident to the management, and asked the latter if respondent could bring the scrap wire outside the company premises; otherwise, he will return it to his locker in the Packhouse Office.[12] However, Castillo did not agree, which prompted respondent to turn around and hurriedly go back to the said office where he took the scrap wire out of his bag.[13] Soon thereafter, a security guard arrived and directed him to go to the Security Office where he was asked to write a statement regarding the incident.[14]

In his statement,[15] respondent admitted the incident, but asserted that he had no intention to steal.[16] He explained that the 16-meter electrical wire was a mere scrap that he had asked from the contractor who removed it from the Packhouse Office.[17]

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[8] *Id.* at 55.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.* at 55-56.

[15] See handwritten letter-explanation of respondent dated July 10, 2013; *id.* at 167.

[16] *Id.* at 56.

[17] *Id.*

He also averred that as far as he knows, only scrap materials which are to be taken out of the company premises in bulk required a gate pass and that he had no idea that it was also necessary to takeout a piece of loose, scrap wire out of the company's premises.[18] Respondent also clarified that he hurriedly turned around because he had decided to just return the scrap wire to the said office.[19]

On July 16, 2013, respondent received a Notice of Gap[20] requiring him to explain within five (5) days therefrom why no disciplinary action, including termination, should be taken against him on account of the above-mentioned incident.[21] He was also placed on preventive suspension for thirty (30) days effective immediately.[22] In a statement[23] dated July 23, 2013, respondent reiterated that he had no intention to steal from petitioner and that the scrap wire which he had asked from a contractor was already for disposal anyway.[24] He also expressed his remorse over the incident and asked that he be given a chance to correct his mistake.[25] Meetings of petitioner's Review Committee were thereafter conducted, with respondent and the security guards concerned in attendance.[26]

On August 8, 2013, petitioner issued a Decision/Resolution Memo[27] dismissing from service respondent for serious

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[18] *Id*.

[19] *Id*.

[20] See *id*. at 179-182.

[21] *Id*. at 181.

[22] *Id*. at 182.

[23] See handwritten letter-explanation of respondent dated July 23, 2013; *id*. at 190-191 and 218-220.

[24] *Id*. at 190.

[25] *Id*. at 191.

[26] *Id*. at 56.

[27] *Id*. at 192-195.

misconduct.[28] Petitioner found no merit in respondent's claim that he was unaware that a gate pass is required to take out a piece of scrap wire, pointing out that the same is incredulous since he had been working thereat for nineteen (19) years already.[29] It also drew attention to the fact that respondent refused to submit his bag for inspection, which, according to petitioner, confirmed his intention to take the wire for his personal use.[30] Further, petitioner emphasized that respondent's actions violated its rules which, among others, limit the use of company properties for business purposes only and mandate the employees, such as respondent, to be fair, honest, ethical, and act responsibly and with integrity.[31]

In a letter[32] dated August 14, 2013, respondent sought reconsideration and prayed for a lower penalty, especially considering the length of his service to it and the lack of intent to steal.[33] However, in a Memo[34] dated August 28, 2013, petitioner denied respondent's appeal. Hence, on September 30, 2013, respondent filed a complaint[35] before the NLRC for illegal dismissal and money claims, docketed as NLRC Case No. (CN) RAB-I-09-1102-13(LU-1), averring that the penalty of dismissal from service imposed upon him was too harsh since he had acted in good faith in taking the piece of scrap wire.[36] Respondent

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[28] *Id*. at 194.

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] See handwritten letter of respondent dated August 14, 2013; *id*. at 225-226.

[33] *Id*.

[34] In particular, petitioner's denial refers to respondent's "request/appeal of a graceful exit by way of resignation." See *id*. at 227.

[35] *Id*. at 231. See also Single-Entry Approach (SENA) dated August 29, 2013; *id*. at 228.

[36] See respondent's position paper dated November 15, 2013; *id*. at 200.

maintained that there was no wrongful intent on his part which would justify his dismissal from service for serious misconduct, considering that the contractor who removed it from the Packhouse Office led him to believe that the same was already for disposal.[37]

Meanwhile, petitioner countered that respondent's taking of the electrical wire for his personal use, without authority from the management, shows his intent to gain.[38] In addition to this, it was highlighted that respondent refused to submit himself and his bag for inspection and attempted to corrupt Castillo by convincing him to refrain from reporting the incident to the management.[39] These, coupled with his sudden fleeing from Gate 2, bolster the charge of serious misconduct against him.[40] With respect to respondent's claim that the contractor who removed the wire from the Packhouse Office led him to believe that the same was already for disposal, petitioner pointed out that the contractor's personnel have issued statements belying respondent's claim and categorically stated that they did not give away any electrical wire to anyone.[41]

The Labor Arbiter's Ruling

In a Decision[42] dated January 24, 2014, the Labor Arbiter (LA) dismissed respondent's complaint and held that the latter was validly dismissed from service by petitioner for committing the crime of theft, and therefore, not entitled to reinstatement, backwages, and other money claims.[43]

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[37] *Id*.

[38] See petitioner's position paper dated November 15, 2013; *id*. at 161.

[39] *Id*.

[40] *Id*.

[41] *Id.* See various statements of AE Square Contractors assigned at the Packhouse Office; *id*. at 173-177.

[42] Not attached to the *rollo*.

[43] The LA ruling was penned by Executive Labor Arbiter Irenarco R. Rimando. See *rollo*, pp. 57 and 124.

The NLRC Ruling

In a Decision[44] dated March 31, 2014, the NLRC reversed the LA's ruling and held that the penalty of dismissal from service imposed upon respondent was unduly harsh since his misconduct was not so gross to deserve such penalty.[45] It found merit in respondent's defense that he took the scrap wire in the belief that it was already for disposal, noting that petitioner never denied the same.[46] The NLRC also emphasized that petitioner did not suffer any damage since respondent was not able to take the wire outside the company premises.[47] Moreover, he did not hold a position of trust and confidence and was remorseful of his mistake, as evidenced by his repeated pleas for another chance.[48] These, coupled with the fact that he had been in petitioner's employ for nineteen (19) years, made respondent's dismissal from service excessive and harsh.[49] Considering, however, the strained relations between the parties, the NLRC awarded separation pay in favor of respondent in lieu of reinstatement.[50]

Petitioner moved for reconsideration,[51] which was, however, denied in a Resolution[52] dated April 30, 2014.

The CA Ruling

In a Decision[53] dated February 13, 2015, the CA dismissed the petition for *certiorari* and affirmed the ruling of the NLRC.

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[44] *Id*. at 124-130.

[45] *Id*. at 127.

[46] *Id*. at 128.

[47] *Id*.

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

[49] *Id*. at 129.

[50] *Id*.

[51] See motion for reconsideration dated April 11, 2014; *id*. at 134-147.

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

[53] *Id*. at 54-63.

It agreed with the NLRC's observation that respondent was illegally dismissed, pointing out that petitioner failed to prove that it prohibited its employees from taking scrap materials outside the company premises. Besides, respondent's taking of the scrap wire did not relate to the performance of his work as packhouse operator.[54]

The CA also drew attention to respondent's unblemished record in the company where he had been employed for nineteen (19) years already, adding too that bad faith cannot be ascribed to him since he volunteered the information about the scrap wire to Castillo and offered to return the same if it was not possible to bring it outside of the company premises.[55] According to the CA, respondent's acts only constituted a lapse in judgment which does not amount to serious misconduct that would warrant his dismissal from service.[56]

Dissatisfied, petitioner moved for reconsideration,[57] which was denied by the CA in its Resolution[58] dated September 7, 2015; hence, the present petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in affirming the ruling of the NLRC.

The Court's Ruling

The petition is partly meritorious.

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[54] *Id*. at 60.

[55] *Id*. at 60-61.

[56] *Id*. at 61.

[57] See motion for reconsideration dated March 13, 2015; *id*. at 66-84.

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

There is no question that the employer has the inherent right to discipline, including that of dismissing its employees for just causes.[59] This right is, however, subject to reasonable regulation by the State in the exercise of its police power.[60] Accordingly, the finding that an employee violated company rules and regulations is subject to scrutiny by the Court to determine if the dismissal is justified and, if so, whether the penalty imposed is commensurate to the gravity of his offense.[61]

In this case, the Court agrees with the CA and the NLRC that respondent's misconduct is not so gross as to deserve the penalty of dismissal from service. As correctly observed by the NLRC, while there is no dispute that respondent took a piece of wire from petitioner's La Union Plant and tried to bring it outside the company premises, he did so in the belief that the same was already for disposal. Notably, petitioner never denied that the piece of wire was already for disposal and, hence, practically of no value. At any rate, petitioner did not suffer any damage from the incident, given that after being asked to submit himself and his bag for inspection, respondent had a change of heart and decided to just return the wire to the Packhouse Office. Respondent has also shown remorse for his mistake, pleading repeatedly with petitioner to reconsider the penalty imposed upon him.[62]

Time and again, the Court has held that infractions committed by an employee should merit only the corresponding penalty demanded by the circumstance.[63] The penalty must be

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[59] *Associated Labor Unions-TUCP v. NLRC*, 362 Phil. 322, 329 (1999).

[60] *Id*.

[61] *Id*.

[62] See *rollo*, pp. 128-129.

[63] *Sagales v. Rustan's Commercial Corporation*, 592 Phil. 468, 482 (2008), citing *Caltex Refinery Employees Association v. NLRC*, 316 Phil. 335, 343 (1995), and *Radio Communications of the Philippines, Inc. v. NLRC*, G.R. No. 102958, June 25, 1993, 223 SCRA 656, 667.

commensurate with the act, conduct or omission imputed to the employee.[64]

In *Sagales v. Rustan's Commercial Corporation*,[65] the dismissal of a Chief Cook who tried to take home a pack of squid heads, which were considered as scrap goods and usually thrown away, was found to be excessive. In arriving at such decision, the Court took into consideration the fact that the Chief Cook had been employed by the company for 31 years already and the incident was his first offense. Besides, the value of the squid heads was a negligible sum of ₱50.00 and the company practically lost nothing since the squid heads were considered scrap goods and usually thrown away. Moreover, the ignominy he suffered when he was imprisoned over the incident, and his preventive suspension for one (1) month was enough punishment for his infraction.

Similarly, in *Farrol v. CA*,[66] a district manager of a bank was dismissed after he incurred a shortage of 50,985.37, which sum was used to pay the retirement benefits of five (5) employees of the bank. Despite being able to return majority of the missing amount, leaving a balance of only 6,995.37, the district manager was dismissed on the ground that under the bank's rules, the penalty therefor is dismissal. According to the Court, the "dismissal imposed on [him] is unduly harsh and grossly disproportionate to the infraction which led to the termination of his services. A lighter penalty would have been more just, if not humane,"[67] considering that it was his first infraction and he has rendered 24 years of service to the bank.

Meanwhile, in the earlier case of *Associated Labor Unions-TUCP v. NLRC*,[68] the dismissal of an employee, who was caught

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[64] *Id.*

[65] *Sagales v. Rustan's Commercial Corporation*; *id.* at 471-485.

[66] 382 Phil. 212 (2000).

[67] *Id.* at 220-221.

[68] *Supra* note 59, at 329-330.

trying to take a pair of boots, an empty aluminum container, and 15 hamburger patties, was considered excessive. The Court ruled that the employee's dismissal would be disproportionate to the gravity of the offense committed, considering the value of the articles he pilfered and the fact that he had no previous derogatory record during his two (2) years of employment in the company. According to the Court, while the items taken were of some value, such misconduct was not enough to warrant his dismissal.

As in the foregoing cases, herein respondent deserves compassion and humane understanding more than condemnation, especially considering that he had been in petitioner's employ for nineteen (19) years already, and this is the first time that he had been involved in taking company property, which item, at the end of the day, is practically of no value. Besides, respondent did not occupy a position of trust and confidence, the loss of which would have justified his dismissal over the incident. As packhouse operator, respondent's duties are limited to ensuring the safe and efficient operation of rotopackers, auto-bag placers, and cariramats, as well as their auxiliaries.[69] He is not a *managerial employee* vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions, or one who, in the normal and routine exercise of his functions, *regularly handles significant amounts of money or property*.[70]

Neither can respondent's infraction be characterized as a serious misconduct which, under Article 282 (now Article 297) of the Labor Code,[71] is a just cause for dismissal. Misconduct

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[69] *Rollo*, p. 55.

[70] See *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 628 (2008).

[71] See Article 297 of the Labor Code, as amended by Department of Labor and Employment Department Advisory No. 01, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," approved on July 21, 2015.

is an improper or wrong conduct, or a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.[72] To constitute a valid cause for dismissal within the text and meaning of Article 282 (now Article 297) of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character and not merely trivial or unimportant,[73] as in this case where the item which respondent tried to takeout was practically of no value to petitioner. Moreover, ill will or wrongful intent cannot be ascribed to respondent, considering that, while he asked Castillo not to report the incident to the management, he also volunteered the information that he had a piece of scrap wire in his bag and offered to return it if the same could not possibly be brought outside the company premises *sans* a gate pass.

The Court is not unaware of its ruling in *Reno Foods, Inc. v. Nagkakaisang Lakas ng Manggagawa (NLM) – KATIPUNAN*,[74] which was cited in the petition,[75] where an employee was dismissed after being caught hiding six (6) Reno canned goods wrapped in nylon leggings inside her bag. However, in that case, the main issue was the payment of separation pay and/or financial assistance and not the validity of the employee's dismissal. Furthermore, unlike the present case where respondent tried to take a piece of scrap wire, the employee in *Reno Foods* tried to steal items manufactured and sold by the company. Her wrongful intent is also evident as she tried to hide the canned goods by wrapping them in nylon leggings. Here, as earlier

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[72] *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, 739 SCRA 186, 196 citing *Yabut v. Manila Electric Company,* 679 Phil. 97, 110-111 (2012), and *Caltex (Philippines), Inc. v. Agad*, 633 Phil. 217, 233 (2010).

[73] *Imasen Philippine Manufacturing Corporation v. Alcon*, *id.* at 196-197.

[74] 629 Phil. 247 (2010).

[75] *Rollo*, pp. 32-33.

adverted to, respondent volunteered the information that he had a piece of scrap wire in his bag.

In fine, the dismissal imposed on respondent as penalty for his attempt to take a piece of scrap wire is unduly harsh and excessive. The CA therefore did not err in affirming the NLRC's ruling finding respondent's dismissal to be invalid. Clearly, the punishment meted against an errant employee should be commensurate with the offense committed.[76] Thus, care should be exercised by employers in imposing dismissal to erring employees.[77] Based on the circumstances of this case, respondent's dismissal was not justified. This notwithstanding, the disposition of the CA should be modified with respect to the consequential award of "separation pay in lieu of reinstatement," which was assailed in the instant petition as one which has "no factual, legal or even equitable basis."[78]

As a general rule, an illegally dismissed employee is entitled to: (*a*) reinstatement (or separation pay, if reinstatement is not viable); and (*b*) payment of full backwages.[79]

In this case, the Court cannot sustain the award of separation pay in lieu of respondent's reinstatement on the bare allegation of the existence of "strained relations" between him and the petitioner. It is settled that the doctrine on "strained relations" cannot be applied indiscriminately since every labor dispute almost invariably results in "strained relations;" otherwise, reinstatement can never be possible simply because some hostility is engendered between the parties as a result of their disagreement.[80] It is imperative, therefore, that strained relations be demonstrated as a fact and adequately supported by substantial evidence showing that the relationship between the employer

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[76] See *supra* note 63, at 482.

[77] *Id*. at 485.

[78] *Rollo*, p. 42.

[79] *Integrated Microelectronics, Inc. v. Pionilla*, 716 Phil. 818, 823 (2013).

[80] *Capili v. NLRC*, 337 Phil. 210, 216 (1997).

and the employee is indeed strained as a necessary consequence of the judicial controversy.[81]

Unfortunately, the Court failed to find the factual basis of the award of separation pay to herein respondent. The NLRC Decision did not state the facts which demonstrate that reinstatement is no longer a feasible option that could have justified the alternative relief of granting separation pay.[82] Hence, reinstatement cannot be barred, especially, as in this case, when the employee has not indicated an aversion to returning to work, or does not occupy a position of trust and confidence in, or has no say in the operation of the employer's business.[83] As priorly stated, respondent had expressed remorse over the incident and had asked to be given the chance to correct his mistake. He had also prayed for a lower penalty than dismissal, especially considering his lack of intent to steal, and his unblemished record of 19 years of employment with petitioner. All these clearly indicate his willingness to continue in the employ of petitioner and to redeem himself. Considering further that respondent did not occupy a position of trust and confidence and that his taking of the scrap wire did not relate to the performance of his work as packhouse operator, his reinstatement remains a viable remedy. The award of separation pay, therefore, being a mere exception to the rule, finds no application herein. Accordingly, he should be reinstated to his former position.

Meanwhile, anent the propriety of awarding backwages, the Court observes that respondent's transgression – even if not deserving of the ultimate penalty of dismissal – warrants the denial of the said award following the parameters in *Integrated Microelectronics, Inc. v. Pionilla*.[84] In that case, the Court ordered

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[81] *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 484, citing *Golden Ace Builders v. Talde*, 634 Phil. 364, 371 (2010).

[82] *Tenaza v. R. Villegas Taxi Transport*, *id*.

[83] *Leopard Security and Investment Agency v. Quitoy*, 704 Phil. 449, 460 (2013).

[84] *Supra* note 79.

the reinstatement of the employee without backwages on account of the following: (*a*) the fact that the dismissal of the employee would be too harsh a penalty; and (*b*) that the employer was in good faith in terminating the employee, *viz.*:

The aforesaid exception was recently applied in the case *of Pepsi-Cola Products, Phils., Inc. v. Molon* [(704 Phil. 120, 144-145 [2013]), wherein the Court, citing several precedents, held as follows:

> An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay[,] if reinstatement is no longer viable, and backwages. In certain cases, however, the Court has ordered the reinstatement of the employee without backwages[,] considering the fact that: (1) the dismissal of the employee would be too harsh a penalty; and (2) the employer was in good faith in terminating the employee. For instance, in the case of *Cruz v. Minister of Labor and Employment* [(205 Phil. 14, 18-19 [1983]), the Court ruled as follows:
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> > The Court is convinced that petitioner's guilt was substantially established. Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of **dismissal which may be too drastic. Denial of backwages would sufficiently penalize her for her infractions**. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. **The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages.** Only employees discriminately dismissed are entitled to backpay.
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> Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. [NLRC]* [(202 Phil. 850, 856 [1982]), the Court pronounced that "the ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."

The factual similarity of these cases to Remandaban's situation deems it appropriate to render the same disposition.[85] (Emphases supplied)

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[85] *Id.* at 823-824.

Having established that respondent's dismissal was too harsh a penalty for attempting to take a piece of scrap wire that was already for disposal and, hence, practically of no value, and considering that petitioner was in good faith when it dismissed respondent for his misconduct, the Court deems it proper to order the reinstatement of respondent to his former position but without backwages. Respondent was not entirely faultless and therefore, should not profit from a wrongdoing.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated February 13, 2015 and the Resolution dated September 7, 2015 of the Court of Appeals in CA-G.R. SP No. 136413 are hereby **AFFIRMED** with **MODIFICATION** deleting the ward of separation pay and in lieu thereof, directing the reinstatement of respondent Renante J. Obra to his former position without backwages.

SO ORDERED.

Sereno, C.J. (*Chairperson*), *Leonardo-de Castro*, *Bersamin,* and *Caguioa, JJ.,* concur.

EN BANC

[A.C. No. 11113. August 9, 2016]

CLEO B. DONGGA-AS, *c*omplainant, *vs.* ATTY. ROSE BEATRIX CRUZ-ANGELES, ATTY. WYLIE M. PALER, and ATTY. ANGELES GRANDEA, of the ANGELES, GRANDEA & PALER LAW OFFICE, *respondents.*

SYLLABUS

1. **LEGAL ETHICS; LAWYER'S NEGLECT OF ENTRUSTED LEGAL MATTER CONSTITUTES INEXCUSABLE NEGLIGENCE; LAWYER'S FAILURE TO RETURN UPON DEMAND THE FUNDS HELD IN BEHALF OF THE CLIENT IS GROSS VIOLATION OF GENERAL MORALITY AND PROFESSIONAL ETHICS.—** A judicious perusal of the records reveals that sometime in May 2004, complainant secured the services of Attys. Cruz-Angeles and Paler for the purpose of annulling his marriage with Mutya, and in connection therewith, paid Attys. Cruz-Angeles and Paler the aggregate sum of ₱350,000.00 representing legal fees. However, despite the passage of more than five (5) months from the engagement, Attys. Cruz-Angeles and Paler failed to file the appropriate pleading to initiate the case before the proper court; and worse, could not even show a finished draft of such pleading. Such neglect of the legal matter entrusted to them by their client constitutes a flagrant violation of Rule 18.03, Canon 18 of the CPR x x x [A] lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable," as in this case. In this relation, Attys. Cruz-Angeles and Paler also violated Rules 16.01 and 16.03, Canon 16 of the CPR when they failed to return to complainant the amount of ₱350,000.00 representing their legal fees, x x x [A] lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics."

2. **ID.; ID.; MISREPRESENTATIONS AND DECEITS; PRESENT IN INSINUATING THAT A FRIENDLY COURT AND JUDGE CAN BE FOUND THAT WILL ENSURE A FAVOURABLE RULING IN THE ANNULMENT CASE.—** Attys. Cruz-Angeles and Paler misrepresented to complainant that the delay in the filing of his petition for annulment was due to the fact that they were still looking for a "friendly" court, judge, and public prosecutor who will not be too much of a hindrance in achieving success in the annulment case. x x x Such misrepresentations and deceits on the part of Attys. Cruz-Angeles and Paler are violations of Rule 1.01, Canon 1 of the

CPR, x x x Their acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they also reveal basic moral flaws that make Attys. Cruz-Angeles and Paler unfit to practice law. As members of the Bar, Attys. Cruz-Angeles and Paler should not perform acts that would tend to undermine and/or denigrate the integrity of the courts x x x Respect for the courts guarantees the stability of the judicial institution. Without this guarantee, the institution would be resting on very shaky foundations. This is the very thrust of Canon 11 of the CPR, which provides that "[a] lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others." Hence, lawyers who are remiss in performing such sworn duty violate the aforesaid Canon 11, and as such, should be held administratively liable and penalized accordingly, as in this case.

3. **ID.; ID.; PENALTY; THREE YEARS SUSPENSION FROM THE PRACTICE OF LAW AND RETURN OF THE AMOUNT RECEIVED AS LEGAL FEES PROPER IN CASE AT BAR.—** In this case, not only did Attys. Cruz-Angeles and Paler fail to file complainant's petition for annulment of marriage and return what the latter paid them as legal fees, they likewise misrepresented that they can find a court, judge, and prosecutor who they can easily influence to ensure a favorable resolution of such petition, to the detriment of the judiciary and the national prosecutorial service. Under these circumstances, the Court individually imposes upon Attys. Cruz-Angeles and Paler the penalty of suspension from the practice of law for a period of three (3) years. Finally, the Court sustains the IBP's recommendation ordering Attys. Cruz-Angeles and Paler to return the amount of ₱350,000.00 they received from complainant as legal fees. It is well to note that "while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement." Hence, since Attys. Cruz-Angeles and Paler received the aforesaid amount as part of their legal fees, the Court finds the return thereof to be in order.

APPEARANCES OF COUNSEL

Alfafara Law Office for complainant.
Manuel R. Ravanera for respondents.
Ahmed C. Paglinawan co-counsel for respondent Cruz-Angeles.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a Complaint-Affidavit[1] filed on February 11, 2005 by complainant Cleo B. Dongga-as (complainant), before the Integrated Bar of the Philippines (IBP) — Commission on Bar Discipline (CBD), against respondents Atty. Rose Beatrix Cruz-Angeles (Atty. Cruz-Angeles), Atty. Wylie M. Paler (Atty. Paler), and Atty. Angeles Grandea (Atty. Grandea; collectively, respondents) of the Angeles, Grandea & Paler Law Office (law firm), charging them of various violations of the Code of Professional Responsibility (CPR) for, *inter alia*, refusing to return the money given by complainant in exchange for legal services which respondents failed to perform.

The Facts

Complainant alleged that sometime in May 2004, he engaged the law firm of respondents to handle the annulment of his marriage with his wife, Mutya Filipinas Puno-Dongga-as (Mutya). In his meeting with Attys. Cruz-Angeles and Paler, complainant was told that: (*a*) the case would cost him ₱300,000.00, with the first ₱100,000.00 payable immediately and the remaining ₱200,000.00 payable after the final hearing of the case; (*b*) respondents will start working on the case upon receipt of ₱100,000.00, which will cover the acceptance fee, psychologist fee, and filing fees; and (*c*) the time-frame for the resolution of the case will be around three (3) to four (4)

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[1] Dated February 10, 2005. *Rollo*, pp. 2-11.

months from filing. Accordingly, complainant paid respondents ₱100,000.00 which was duly received by Atty. Cruz-Angeles.[2]

From then on, complainant constantly followed-up his case with Attys. Cruz-Angeles and Paler. However, despite his constant prodding, Attys. Cruz-Angeles and Paler could not present any petition and instead, offered excuses for the delay, saying that: (*a*) they still had to look for a psychologist to examine Mutya; (*b*) they were still looking for a "friendly" court and public prosecutor; and (*c*) they were still deliberating where to file the case.[3] They promised that the petition would be filed on or before the end of June 2004, but such date passed without any petition being filed. As an excuse, they reasoned out that the petition could not be filed since they have yet to talk to the judge who they insinuated will favorably resolve complainant's petition.[4]

Sometime in the third week of July 2004, Attys. Cruz-Angeles and Paler asked for an additional payment of ₱250,000.00 in order for them to continue working on the case. Hoping that his petition would soon be filed, complainant dutifully paid the said amount on July 23, 2004, which was again received by Atty. Cruz-Angeles.[5] However, to complainant's dismay, no appreciable progress took place. When complainant inquired about the delay in the filing of the case, Atty. Cruz-Angeles attempted to ease his worries by saying that the draft petition was already submitted to the judge for editing and that the petition will soon be finalized.[6]

In the last week of September 2004, complainant received a text message from Atty. Cruz-Angeles informing him that the National Statistics Office bore no record of his marriage.

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[2] *Id*. at 2-3. See Annex "A-1", *id*. at 12.

[3] *Id*. at 3.

[4] *Id*. at 4.

[5] *Id*. See Annex "A-2", *id*. at 12.

[6] *Id*.

The latter explained then that this development was favorable to complainant's case because, instead of the proposed petition for annulment of marriage, they would just need to file a petition for declaration of nullity of marriage. She also informed complainant that they would send someone to verify the records of his marriage at the Local Civil Registrar of La Trinidad, Benguet (Civil Registrar) where his marriage was celebrated. However, upon complainant's independent verification through his friend, he discovered that the records of his marriage in the Civil Registrar were intact, and that the alleged absence of the records of his marriage was a mere ruse to cover up the delay in the filing of the petition.[7]

Utterly frustrated with the delay in the filing of his petition for annulment, complainant went to respondents' law office to terminate their engagement and to demand for a refund of the aggregate amount of ₱350,000.00 he earlier paid them. However, Attys. Cruz-Angeles and Paler refused to return the said amount, and to complainant's surprise, sent him two (2) billing statements dated October 5, 2004[8] and October 10, 2004[9] in the amounts of ₱258,000.00 and ₱324,000.00, respectively. Notably, the October 5, 2004 billing statement included a fee for "consultants (prosecutors)" amounting to ₱45,000.00.[10] In view of the foregoing, complainant filed the instant Complaint-Affidavit before the IBP-CBD, docketed as CBD Case No. 05-1426.

In her defense,[11] Atty. Cruz-Angeles admitted to have received a total of ₱350,000.00 from complainant,[12] but denied that she was remiss in her duties, explaining that the delay in the filing of the petition for annulment of marriage was due to complainant's failure to give the current address of Mutya and

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[7] *Id.* at 5.

[8] See *id.* at 13-14.

[9] See *id.* at 15-16.

[10] *Id.* at 5, 7, and 13.

[11] See Answer/Counter-Affidavit dated June 30, 2005; *id.* at 55- 68.

[12] See *id.* at 58 and 61.

provide sufficient evidence to support the petition.[13] Further, Atty. Cruz-Angeles alleged that it was Atty. Paler who was tasked to draft and finalize the petition.[14] For his part,[15] Atty. Paler moved for the dismissal of the case for failure to state a cause of action, arguing too that complainant filed the present administrative complaint only to avoid payment of attorney's fees.[16]

The IBP's Report and Recommendation

In a Report and Recommendation[17] dated July 10, 2012, the IBP Investigating Commissioner found Attys. Cruz-Angeles and Paler administratively liable and, accordingly, recommended that they be meted the penalty of suspension from the practice of law for four (4) months. However, Atty. Grandea was exonerated of any liability as his participation in the charges has not been discussed, much less proven.[18]

The Investigating Commissioner found that complainant indeed engaged the services of Attys. Cruz-Angeles and Paler in order to annul his marriage with his wife, Mutya. Despite receiving the aggregate amount of ₱350,000.00 from complainant, Attys. Cruz-Angeles and Paler neglected the legal matter entrusted to them, as evidenced by their failure to just even draft complainant's petition for annulment despite being engaged for already five (5) long months.[19] Moreover, as pointed out by the Investigating Commissioner, despite their preliminary assessment that complainant's petition would not likely prosper, Attys. Cruz-Angeles and Paler still proceeded to collect an

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[13] See *id*. at 66.

[14] *Id*. at 62.

[15] See Answer/Counter-Affidavit dated July 5, 2005; *id*. at 72-74.

[16] *Id*. at 72.

[17] *Id*. at 203-207. Signed by Commissioner Oliver A. Cachapero.

[18] *Id*. at 207.

[19] See *id*. at 205-206.

additional ₱250,000.00 from complainant. Worse, they even billed him an exorbitant sum of ₱324,000.00.[20] Thus, the Investigating Commissioner opined that the amounts respondents had already collected and would still want to further collect from complainant can hardly be spent for research in connection with the annulment case that was not filed at all. Neither can they cover just fees for Attys. Cruz-Angeles and Paler who did nothing to serve complainant's cause.[21]

In a Resolution[22] dated September 28, 2013, the IBP Board of Governors adopted and approved the aforesaid Report and Recommendation, with modification increasing the recommended penalty to two (2) years suspension from the practice of law. Atty. Cruz-Angeles moved for reconsideration,[23] which was, however, denied in a Resolution[24] dated June 7, 2015.

The Issue Before the Court

The essential issue in this case is whether or not Attys. Cruz-Angeles and Paler should be held administratively liable for violating the CPR.

The Court's Ruling

A judicious perusal of the records reveals that sometime in May 2004, complainant secured the services of Attys. Cruz-Angeles and Paler for the purpose of annulling his marriage with Mutya, and in connection therewith, paid Attys. Cruz-Angeles and Paler the aggregate sum of ₱350,000.00 representing

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[20] *Id*. at 206.

[21] *Id*. at 207.

[22] See Notice of Resolution in Resolution No. XX-2013-105 signed by National Secretary Nasser A. Marohomsalic; *id*. at 202 (including dorsal portion).

[23] See motion for reconsideration dated February 11, 2014; *id*. at 208-214.

[24] See Notice of Resolution in Resolution in Resolution No. XXI-2015-482 signed by National Secretary Nasser A. Marohomsalic; *id*. at 228-229.

legal fees. However, despite the passage of more than five (5) months from the engagement, Attys. Cruz-Angeles and Paler failed to file the appropriate pleading to initiate the case before the proper court; and worse, could not even show a finished draft of such pleading. Such neglect of the legal matter entrusted to them by their client constitutes a flagrant violation of Rule 18.03, Canon 18 of the CPR, to wit:

> 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.

Case law exhorts that, "once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable,"[25] as in this case.

In this relation, Attys. Cruz-Angeles and Paler also violated Rules 16.01 and 16.03, Canon 16 of the CPR when they failed to return to complainant the amount of ₱350,000.00 representing their legal fees, *viz.*:

> CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.
>
> Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. x x x.

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[25] See *Spouses Lopez v. Limos*, A.C. No. 7618, February 2, 2016.

It bears stressing that "the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics."[26]

Furthermore, Attys. Cruz-Angeles and Paler misrepresented to complainant that the delay in the filing of his petition for annulment was due to the fact that they were still looking for a "friendly" court, judge, and public prosecutor who will not be too much of a hindrance in achieving success in the annulment case. In fact, in the two (2) billing statements dated October 5, 2004[27]

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[26] See *id*.

[27] See *rollo*, pp. 13-14. The breakdown of expenses is as follows:

Malaybalay:	
Representation	₱ 45,000.00
Counsel	50,000.00
Antipolo:	
Representation	5,000.00
Manila:	
Representation	5,000.00
Cavite:	
Representation	5,000.00
Bataan:	
Representation	5,000.00
Pampanga:	
Representation	5,000.00
Research:	10,000.00
Expenses:	
Long distance/cellphones	7,500.00
Administrative	3,000.00

and October 10, 2004,[28] Attys. Cruz-Angeles and Paler made it appear that they went to various locations to look for a suitable venue in filing the said petition, and even paid various amounts to prosecutors and members of the National Bureau of Investigation to act as their "consultants." Such misrepresentations and deceits on the part of Attys. Cruz-Angeles and Paler are violations of Rule 1.01, Canon 1 of the CPR, *viz.*:

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

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Rule 1.01, Canon 1 of the CPR instructs that "[a]s officers of the court, lawyers are bound to maintain not only a high

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Fees:

Police	5,000.00
Witnesses (5)	5,000.00
Consultants (prosecutors)	45,000.00
Consultants (NBI)	2,500.00
Psychologists (initial)	5,000.00
Certifications	45,000.00
Address	5,000.00
TOTAL (approximate)	₱ 258,000.00

[28] *Id.* at 15. the breakdown of expenses is as follows:

Acceptance fees for law office	₱ 200,000.00
Collaborating counsel (Malaybalay)	100,000.00
Conference with collaborating counsel @ ₱2,500 per meeting	7,500.00
Two meeting in Fort Bonifacio (two counsels)	10,000.00
Research in the following places:	
Samar	300.00
Cebu	300.00
Bohol	300.00
Basilan	300.00
Sulu	300.00
Total	₱ 324,000.00

standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing."[29] Clearly, Attys. Cruz-Angeles and Paler fell short of such standard when they committed the afore-described acts of misrepresentation and deception against complainant. Their acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they also reveal basic moral flaws that make Attys. Cruz-Angeles and Paler unfit to practice law.[30]

As members of the Bar, Attys. Cruz-Angeles and Paler should not perform acts that would tend to undermine and/or denigrate the integrity of the courts, such as insinuating that they can find a "friendly" court and judge that will ensure a favorable ruling in complainant's annulment case. It is their sworn duty as lawyers and officers of the court to uphold the dignity and authority of the courts. Respect for the courts guarantees the stability of the judicial institution. Without this guarantee, the institution would be resting on very shaky foundations.[31] This is the very thrust of Canon 11 of the CPR, which provides that "[a] lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others." Hence, lawyers who are remiss in performing such sworn duty violate the aforesaid Canon 11, and as such, should be held administratively liable and penalized accordingly, as in this case.[32]

Moreover, Canon 7 of the CPR commands every lawyer to "at all times uphold the integrity and dignity of the legal profession" for the strength of the legal profession lies in the dignity and integrity of its members. It is every lawyer's duty to maintain the high regard to the profession by staying true to his oath and keeping his actions beyond reproach. It must be

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[29] See *Spouses Lopez v. Limos*, *supra* note 25.

[30] See *id*.

[31] See *PHILCOMSAT Holdings Corporation v. Lokin*, A.C. No. 11139, April 19, 2016, citing *Baculi v. Battung*, 674 Phil. 1, 8-9 (2011).

[32] See *id*.

reiterated that as an officer of the court, it is a lawyer's sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice; as acts and/or omissions emanating from lawyers which tend to undermine the judicial edifice is disastrous to the continuity of the government and to the attainment of the liberties of the people. Thus, all lawyers should be bound not only to safeguard the good name of the legal profession, but also to keep inviolable the honor, prestige, and reputation of the judiciary.[33] In this case, Attys. Cruz-Angeles and Paler compromised the integrity not only of the judiciary, but also of the national prosecutorial service, by insinuating that they can influence a court, judge, and prosecutor to cooperate with them to ensure the annulment of complainant's marriage. Indubitably, Attys. Cruz-Angeles and Paler also violated Canon 7 of the CPR, and hence, they should be held administratively liable therefor.

Anent the proper penalty for Attys. Cruz-Angeles and Paler, jurisprudence provides that in similar cases where lawyers neglected their client's affairs, failed to return the latter's money and/or property despite demand, and at the same time committed acts of misrepresentation and deceit against their clients, the Court imposed upon them the penalty of suspension from the practice of law for a period of two (2) years. In *Jinon v. Jiz*,[34] the Court suspended the lawyer for a period of two (2) years for his failure to return the amount his client gave him for his legal services which he never performed. Also, in *Agot v. Rivera*,[35] the Court suspended the lawyer for a period of two (2) years for his (*a*) failure to handle the legal matter entrusted to him and to return the legal fees in connection therewith; and (*b*) misrepresentation that he was an immigration lawyer, when in

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[33] See *id*., citing *Francia v. Abdon*, A.C. No. 10031, July 23, 2014, 730 SCRA 341, 354-355.

[34] 705 Phil. 321 (2013).

[35] A.C. No. 8000, August 5, 2014, 732 SCRA 12.

truth, he was not. Finally, in *Spouses Lopez v. Limos*,[36] the Court suspended the erring lawyer for three (3) years for her failure to file a petition for adoption on behalf of complainants, return the money she received as legal fees, and for her commission of deceitful acts in misrepresenting that she had already filed such petition when nothing was actually filed, resulting in undue prejudice to therein complainants. In this case, not only did Attys. Cruz-Angeles and Paler fail to file complainant's petition for annulment of marriage and return what the latter paid them as legal fees, they likewise misrepresented that they can find a court, judge, and prosecutor who they can easily influence to ensure a favorable resolution of such petition, to the detriment of the judiciary and the national prosecutorial service. Under these circumstances, the Court individually imposes upon Attys. Cruz-Angeles and Paler the penalty of suspension from the practice of law for a period of three (3) years.

Finally, the Court sustains the IBP's recommendation ordering Attys. Cruz-Angeles and Paler to return the amount of ₱350,000.00 they received from complainant as legal fees. It is well to note that "while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement."[37] Hence, since Attys. Cruz-Angeles and Paler received the aforesaid amount as part of their legal fees, the Court finds the return thereof to be in order.

WHEREFORE, respondents Atty. Rose Beatrix Cruz-Angeles and Atty. Wylie M. Paler are found **GUILTY** of

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[36] See *supra* note 25.

[37] See *id.*, citing *Pitcher v. Gagate*, 719 Phil. 82, 94 (2013).

violating Rule 1.01, Canon 1, Canon 7, Canon 11, Rule 18.03, Canon 18, and Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, each of them is hereby **SUSPENDED** from the practice of law for a period of three (3) years, effective upon the finality of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Likewise, respondents Atty. Rose Beatrix Cruz-Angeles and Atty. Wylie M. Paler are **ORDERED** to return to complainant Cleo B. Dongga-as the legal fees they received from the latter in the aggregate amount of ₱350,000.00 within ninety (90) days from the finality of this Decision. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Meanwhile, the complaint as against Atty. Angeles Grandea is **DISMISSED** for lack of merit.

Let copies of this Decision be served on the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the country for their information and guidance and be attached to respondents' personal records as attorney.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perez, Reyes, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Brion, J., on leave.

Mendoza, J., on official leave.

EN BANC

[A.C. No. 11350. August 9, 2016]
(Formerly CBD Case No. 14-4211)

ADEGOKE R. PLUMPTRE, *complainant, vs.* **ATTY. SOCRATES R. RIVERA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; VIOLATED WHEN LAWYER ABSCONDS WITH THE MONEY ENTRUSTED BY CLIENT AND BEHAVES IN A MANNER NOT BEFITTING A MEMBER OF THE BAR .— In *Macarilay v. Seriña*, this Court held that "the unjustified withholding of funds belonging to the client warrants the imposition of disciplinary action against the lawyer." By absconding with the money entrusted to him by his client and behaving in a manner not befitting a member of the bar, respondent violated the Canons of the Code of Professional Responsibility: x x x As his client's advocate, a lawyer is duty-bound to protect his client's interests and the degree of service expected of him in this capacity is his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and exertion of his utmost learning and ability." The lawyer also has a fiduciary duty, with the lawyer-client relationship imbued with utmost trust and confidence. Respondent failed to serve his client with fidelity, competence, and diligence. He not only neglected the attorney-client relationship established between them; he also acted in a reprehensible manner towards complainant, *i.e.*, cussing and threatening complainant and his family with bodily harm, hiding from complainant, and refusing without reason to return the money entrusted to him for the processing of the work permit. Respondent's behavior demonstrates his lack of integrity and moral soundness. x x x A lawyer must, at no time, lack 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.

2. ID.; ID.; BY IMPLYING THAT A FAVOURABLE RULING CAN BE NEGOTIATED FOR A SUM, RESPONDENT

LAWYER TRAMPLED UPON THE INTEGRITY OF THE JUDICIAL SYSTEM AND ERODED CONFIDENCE ON THE JUDICIARY.— "A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system." Further, "a lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body." By implying that he can negotiate a favorable ruling for the sum of ₱8,000.00, respondent trampled upon the integrity of the judicial system and eroded confidence on the judiciary. This gross disrespect of the judicial system shows that he is wanting in moral fiber and betrays the lack of integrity in his character. The practice of law is a privilege, and respondent has repeatedly shown that he is unfit to exercise it.

3. ID.; DISBARMENT PROCEEDINGS; SERVICE OF NOTICE ON THE ADDRESS APPEARING IN THE INTEGRATED BAR OF THE PHILIPPINES RECORDS SHALL CONSTITUTE SUFFICIENT NOTICE OF THE ADMINISTRATIVE PROCEEDINGS AGAINST THE LAWYER.— *Stemmerik v. Mas* discussed the sufficiency of notice of disbarment proceedings. This Court held that lawyers must update their records with the Integrated Bar of the Philippines by informing it of any change in office or residential address and contact details. Service of notice on the office or residential address appearing in the Integrated Bar of the Philippines records shall constitute sufficient notice to a lawyer for administrative proceedings against him or her.

R E S O L U T I O N

***PER CURIAM*:**

This resolves a disbarment case against respondent Atty. Socrates R. Rivera for absconding with money entrusted to him and soliciting money to bribe a judge.

On May 13, 2014, complainant Adegoke R. Plumptre filed a complaint for disbarment[1] against respondent before the Integrated Bar of the Philippines.

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[1] *Rollo*, pp. 2-13.

Complainant alleges that on March 7, 2014, he called respondent and asked for help in his application for a work permit from the Bureau of Immigration.[2] They met a few days later, and complainant paid respondent ₱10,000.00 as professional fee.[3]

They met again, and complainant gave respondent another ₱10,000.00, together with his passport. This was allegedly for the processing of his work permit.[4]

They met for a third time since respondent asked complainant to submit ID photos.[5] Respondent asked complainant for another ₱10,000.00, but complainant refused as they only agreed on the amount of ₱20,000.00.[6]

Respondent also asked complainant for ₱8,000.00, allegedly for complainant's other case, which respondent was also working on.[7] He explained that ₱5,000.00 would be given to a Las Piñas judge to reverse the motion for reconsideration against complainant, while ₱3,000.00 would be used to process the motion for reconsideration. Complainant gave him the ₱8,000.00.[8]

Complainant claims that after respondent received the money, he never received any updates on the status of his work permit and pending court case.[9] Further, whenever he called respondent to follow up on his work permit, respondent hurled invectives at him and threatened him and his wife.[10]

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[2] *Id.* at 2.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.* at 4.

[8] *Id.*

[9] *Id.* at 3.

[10] *Id.*

Complainant would retort by saying that he would file complaints against respondent if he did not give back the money and passport. That was the last time complainant heard from respondent.[11]

After inquiring and researching on respondent's whereabouts,[12] complainant was able to track down respondent and get back his passport, which respondent coursed through complainant's aunt.[13] However, despite the return of complainant's passport, respondent still refused to return the ₱28,000.00 earlier endorsed to him.[14]

Complainant then decided to file a complaint against respondent before the Integrated Bar of the Philippines.[15]

On May 14, 2014, the Integrated Bar of the Philippines issued the Order[16] directing respondent to file an answer to the complaint.

Respondent failed to show up at the September 17, 2014 mandatory conference,[17] as well as at the second mandatory conference set on October 22, 2014.[18] The parties were directed to submit their verified position papers, after which the case was submitted for resolution.[19]

On May 27, 2015, the Investigating Commissioner recommended respondent's suspension for two (2) years from the practice of law and return of ₱28,000.00 to complainant.[20]

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[11] *Id*.

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

[13] *Id*. at 3.

[14] *Id*.

[15] *Id*. at 2-13.

[16] *Id*. at 14.

[17] *Id*. at 22.

[18] *Id*. at 24.

[19] *Id*.

[20] *Id*. at 46-47, Report and Recommendation.

On June 20, 2015, the Integrated Bar of the Philippines Board of Governors adopted and approved[21] the Investigating Commissioner's recommendation, but modified it to disbar respondent from the practice of law, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A ", for Respondent's violation of Canon 1, Canon 7, Canon 16, Rule 16.01, Canon 17 and Rule 18.04 of the Code of Professional Responsibility, aggravated by his failure to file Answer and to appear in the Mandatory Conference. Thus, Atty. Socrates R. Rivera is hereby* ***DISBARRED from the practice of law and his name stricken off from the Roll of Attorneys*** *and* ***Ordered to Return the Twenty Eight Thousand (₱28,000.00) Pesos to Complainant****.*[22] (Emphasis in the original)

On April 20, 2016, the Integrated Bar of the Philippines transmitted the case to this Court for final action under Rule 139-B of the Rules of Court.[23]

This Court modifies the findings of the Board of Governors.

I

Respondent's repeated failure to comply with several Resolutions of the Integrated Bar of the Philippines requiring him to comment on the complaint lends credence to complainant's allegations. It manifests his tacit admission. Hence, we resolve this case on the basis of the complaint and other documents submitted to the Integrated Bar of the Philippines.

In *Macarilay v. Seriña*,[24] this Court held that "[t]he unjustified withholding of funds belonging to the client warrants the

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[21] *Id*. at 35-36, Notice of Resolution.

[22] *Id*. at 35.

[23] *Id*. at 34.

[24] 497 Phil. 348 (2005) [Per *J*. Panganiban, Third Division].

imposition of disciplinary action against the lawyer."[25] By absconding with the money entrusted to him by his client and behaving in a manner not befitting a member of the bar, respondent violated the following Canons of the Code of Professional Responsibility:

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

. . . . . .

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 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.

. . . . . .

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.

Rule 18.04. – A lawyer shall keep his client informed of the status of his case and shall respond within a reasonable time to the clients request for information.

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[25] *Id*. at 360.

As his client's advocate, a lawyer is duty-bound to protect his client's interests and the degree of service expected of him in this capacity is his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability."[26] The lawyer also has a fiduciary duty, with the lawyer-client relationship imbued with utmost trust and confidence.[27]

Respondent failed to serve his client with fidelity, competence, and diligence. He not only neglected the attorney-client relationship established between them; he also acted in a reprehensible manner towards complainant, *i.e.*, cussing and threatening complainant and his family with bodily harm, hiding from complainant, and refusing without reason to return the money entrusted to him for the processing of the work permit. Respondent's behavior demonstrates his lack of integrity and moral soundness.

Del Mundo v. Capistrano[28] has reiterated the exacting standards expected of law practitioners:

> To stress, the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity and fair dealing. They must perform their fourfold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility. *Falling short of this standard, the Court will not hesitate to discipline an erring lawyer* by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.[29] (Emphasis supplied, citations omitted)

A lawyer must, at no time, lack probity and moral fiber, which are not only conditions precedent to his entrance to the

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[26] Section 15, Canons of Professional Ethics.

[27] *Saldivar v. Cabanes, Jr.*, 713 Phil. 530, 537 (2013) [Per J. Perlas-Bernabe, Second Division].

[28] 685 Phil. 687 (2012) [Per J. Perlas-Bernabe, Third Division].

[29] *Id*. at 693.

bar but are likewise essential demands for his continued membership.[30]

II

When complainant refused to give respondent any more money to process his work permit, respondent persuaded complainant to give him an additional ₱8,000.00 purportedly to ensure that a motion for reconsideration pending before a Las Piñas judge would be decided in complainant's favor.[31] However, after receiving ₱28,000.00 from complainant for the work permit and ensuring the success of complainant's court case, respondent made himself scarce and could no longer be contacted.

Although nothing in the records showed whether the court case was indeed decided in complainant's favor, respondent's act of soliciting money to bribe a judge served to malign the judge and the judiciary by giving the impression that court cases are won by the party with the deepest pockets and not on the merits.[32]

"A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system."[33] Further, "a lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body."[34]

By implying that he can negotiate a favorable ruling for the sum of ₱8,000.00, respondent trampled upon the integrity of the judicial system and eroded confidence on the judiciary. This gross disrespect of the judicial system shows that he is wanting in moral fiber and betrays the lack of integrity in his character.

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[30] *Gonzaga v. Villanueva, Jr.*, 478 Phil. 859, 869 (2004) [Per *C.J.* Davide, Jr., First Division].

[31] *Rollo*, p. 4.

[32] *Id.* at 3.

[33] Code of Professional Responsibility, Canon 1, rule 1.02.

[34] Code of Professional Responsibility, Canon 15, rule 15.06.

The practice of law is a privilege, and respondent has repeatedly shown that he is unfit to exercise it.

III

As for the sufficiency of notice to respondent of the disbarment proceedings against him, this Court notes that on May 14, 2014, the Integrated Bar of the Philippines directed respondent to answer the complaint against him, but he failed to file his answer.[35] The Integrated Bar of the Philippines set two (2) separate dates for mandatory conferences[36] after respondent failed to attend the first setting, but he failed to appear in both instances.[37] All issuances from the Integrated Bar of the Philippines had the requisite registry receipts attached to them.

Stemmerik v. Mas[38] discussed the sufficiency of notice of disbarment proceedings. This Court held that lawyers must update their records with the Integrated Bar of the Philippines by informing it of any change in office or residential address and contact details.[39] Service of notice on the office or residential address appearing in the Integrated Bar of the Philippines records shall constitute sufficient notice to a lawyer for administrative proceedings against him or her.[40]

WHEREFORE, respondent Atty. Socrates R. Rivera is **SUSPENDED** from the practice of law for three (3) years. He is **ORDERED** to return to complainant Adegoke R. Plumptre the amount of ₱28,000.00 with interest at 6% per annum from the date of promulgation of this Resolution until fully paid. He is likewise **DIRECTED** to submit to this Court proof of payment of the amount within 10 days from payment.

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[35] *Rollo*, p. 14.

[36] *Id.* at 15 and 22.

[37] *Id.* at 21 and 23.

[38] 607 Phil. 89 (2009) [Per Curiam, *En Banc*].

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

[40] *Id.*

Let copies of this Resolution be entered in respondent's personal record as a member of the bar, and be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts in the country.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[A.C. No. 10231. August 10, 2016]

OSCAR M. BAYSAC, *complainant, vs.* **ATTY. ELOISA M. ACERON-PAPA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; NOTARIAL LAW; ACKNOWLEDGMENT; AFFIANT'S PERSONAL APPEARANCE IS REQUIRED.— Section 1 of Public Act No. 2103 x x x [and] Section 1, Rule II of the 2004 Rules on Notarial Practice emphasizes the requirement of affiant's personal appearance in an acknowledgment x x x [Thus,] the party acknowledging the document must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents. x x x It was respondent's duty as notary public to require the personal appearance of the person executing the document to enable the former to verify the genuineness of his signature. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be.

2. ID.; ID.; AFFIXING NOTARIAL SEAL ON THE INSTRUMENT CONVERTED THE DEED OF ABSOLUTE SALE FROM A PRIVATE DOCUMENT TO A PUBLIC DOCUMENT.— We have emphasized that among the functions of a notary public is to guard against any illegal or immoral arrangements. By affixing her notarial seal on the instrument, she converted the Deed of Absolute Sale, from a private document into a public document. As a consequence, respondent, in effect, proclaimed to the world that: (1) all the parties therein personally appeared before her; (2) they are all personally known to her; (3) they were the same persons who executed the instrument; (4) she inquired into the voluntariness of execution of the instrument; and (5) they acknowledged personally before her that they voluntarily and freely executed the same.

3. ID.; ID.; NOTARIZING A SPURIOUS DOCUMENT IS GROSS NEGLIGENCE IN THE PERFORMANCE OF DUTY AS NOTARY PUBLIC; PENALTIES.— By notarizing a spurious document, respondent has made a mockery of the legal solemnity of the oath in an acknowledgment. Respondent's failure to perform her duty as a notary public resulted not only in the damage to those directly affected by the notarized document, but also in undermining the integrity of a notary public, and in degrading the function of notarization. Precisely because of respondent's act, complainant was unlawfully deprived of his property. Respondent is reminded that as a lawyer commissioned as notary public, she is required to uphold her sacred duties appertaining to her office, such duties being dictated by public policy and impressed with public interest. x x x Her act of certifying under oath an irregular Deed of Absolute Sale without ascertaining the identities of the persons executing the same constitutes gross negligence in the performance of duty as a notary public. More, as a lawyer, respondent breached Canon 1 of the Code of Professional Responsibility, particularly Canon 1.01. By notarizing the Deed of Absolute Sale, she engaged in unlawful, dishonest, immoral or deceitful conduct. x x x Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties as such, he is given the following penalties: (1) revocation of his notarial commission; (2) disqualification from being commissioned as a notary public for a period of two years; and (3) suspension from the practice of law for one year.

APPEARANCES OF COUNSEL

Charita R. Agdon for complainant.

D E C I S I O N

JARDELEZA, *J.*:

This refers to the Resolution of the Integrated Bar of the Philippines (IBP) Board of Governors dated 13 February 2013 adopting and approving with modification the Report and Recommendation of the Commission on Bar Discipline which found Atty. Eloisa M. Aceron-Papa (respondent) administratively liable for notarizing a fictitious or spurious document. As a consequence, the IBP Board of Governors revoked her commission as notary public and disqualified her from being commissioned as notary public for three years with a stern warning to be more circumspect in her notarial dealings.

The Facts

Complainant Oscar M. Baysac (complainant) owns a property with an area of 322 sq. m. covered by Transfer Certificate of Title (TCT) No. T-58159[1] and registered with the Registry of Deeds of Trece Martires City. The property was mortgaged by complainant to Spouses Emmanuel and Rizalina Cruz (Spouses Cruz) on December 20, 2000.[2] The Deed of Real Estate Mortgage[3] was notarized by Atty. Renelie B. Mayuga-Donato on December 20, 2000.

In February 2003, complainant went to the Registry of Deeds of Trece Martires City to get a certified true copy of the certificate of title of the property because the property had a prospective buyer. However, complainant was surprised to find out that

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[1] *Rollo,* p. 9.

[2] *Id.* at 3.

[3] *Id.* at 10-11.

TCT No. T-58159 had already been cancelled, and in lieu thereof, TCT No. T-67089[4] was issued in favor of Spouses Cruz.[5]

After further investigation, complainant found out that the property was transferred in the name of Spouses Cruz pursuant to a Deed of Absolute Sale[6] which was allegedly executed on January 13, 2003 for the consideration of ₱100,000.00.[7]

The Deed of Absolute Sale which was allegedly signed by complainant, as the owner of the property, was notarized by respondent on January 13, 2003.[8] Complainant, however, vehemently denied having ever signed the Deed of Absolute Sale and having ever appeared before a notary public on January 13, 2003 to acknowledge the same. He claimed that he was in Tanza, Cavite that entire day with Ms. Flocerfida A. Angeles (Ms. Angeles) searching for a buyer of the property.[9] Complainant further stated that the Deed of Absolute Sale showed that what he allegedly presented to the notary public when he acknowledged having executed the document was his Community Tax Certificate (CTC) issued on May 26, 2000 or three years prior to the execution of the Deed of Absolute Sale. The same CTC was used for the notarization of the Deed of Real Estate Mortgage on December 20, 2000.[10]

To support this allegation, complainant submitted the affidavit[11] of Ms. Angeles and Questioned Documents Report No. 515-703[12] dated October 8, 2003 issued by the National Bureau of Investigation (NBI).

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[4] *Id.* at 13.

[5] *Id.* at 3-4.

[6] *Id.* at 14-15.

[7] *Id.* at 4.

[8] *Id.* at 15.

[9] *Id.* at 4.

[10] *Id.* at 5.

[11] *Id.* at 16.

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

In her affidavit, Ms. Angeles declared that she was with complainant in Tanza, Cavite from 7:00 in the morning until 10:30 in the evening on January 13, 2003. She further declared that complainant did not execute the Deed of Absolute Sale and did not personally appear before a notary public in Cavite City on January 13, 2003.[13]

In the Questioned Documents Report No. 515-703, the NBI confirmed that the signature of complainant in the Deed of Absolute Sale and the signatures in other sample documents which he actually signed were not made by one and the same person.[14]

More, a few months after the execution of the Deed of Absolute Sale, and subsequent to the transfer of the title to Spouses Cruz, Atty. Estrella O. Laysa (Atty. Laysa) as counsel for Spouses Cruz, allegedly sent a letter to complainant. The letter demanded him to vacate the property subject of the alleged sale. According to complainant, Atty. Laysa is respondent's partner in Laysa Aceron-Papa Sayarot Law Office. Thus, complainant claimed that respondent's act of improperly notarizing the Deed of Absolute Sale caused him injustice because he was ousted from his property.[15]

In view of these circumstances, complainant filed a Complaint for Disbarment[16] dated April 14, 2009 with the IBP Commission on Bar Discipline for violation of Section 1, Rule II of the 2004 Rules on Notarial Practice.

Records show that respondent did not file any answer to the complaint. The Order[17] dated April 23, 2009 directing respondent to answer was returned to the Commission on Bar Discipline

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[13] *Id.* at 16.

[14] *Id.* at 18.

[15] *Id.* at 6.

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

[17] *Id.* at 19.

with a notation "Moved Out, Left No Address."[18] During the mandatory conference on August 27, 2009, only the counsel for complainant was present.[19] Nevertheless, the Commission on Bar Discipline, in its Order[20] dated August 27, 2009, terminated the mandatory conference and directed the parties to submit their verified position papers so as not to delay the early disposition of the case. Despite the Order dated August 27, 2009 being received by respondent as evidenced by the Registry Return Receipt[21] signed by a certain Zyra N. Ningas, it was only complainant who filed a position paper.[22]

Findings and Recommendation of the IBP

Based on the documents submitted, Investigating Commissioner Atty. Salvador B. Hababag (Atty. Hababag) of the IBP Commission on Bar Discipline (to whom the case was referred for investigation, report and recommendation) submitted his Report and Recommendation[23] dated November 25, 2009. He found respondent administratively liable for notarizing a fictitious or spurious document. Atty. Hababag also stated that respondent was notified of the Order dated August 27, 2009 requiring the parties to submit their position papers.[24] The order was sent to her new address on September 14, 2009, as evidenced by the Registry Return Receipt signed by Zyra N. Ningas. Despite due notice, respondent failed to submit her position paper, and is therefore deemed to have waived her right to present her position to the case.[25] Atty. Hababag recommended that respondent be suspended for two years as notary public.[26]

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[18] *Id.* at 22, 36.

[19] *Id.* at 21.

[20] *Id.* at 22.

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

[22] *Id.* at 24-30.

[23] *Id.* at 36-40.

[24] *Id.* at 36.

[25] *Id.* at 38-39.

[26] *Id.* at 40.

On February 13, 2013, the IBP Board of Governors issued Resolution No. XX-2013-136[27] which adopted the findings of the Investigating Commissioner but modified the recommended penalty. Instead of suspension for two years as notary public, the IBP Board of Governors recommended the disqualification of respondent from being commissioned as notary public for three years with a stern warning to be more circumspect in her notarial dealings and that repetition of the same or similar act shall be dealt with more severely.

The Court's Ruling

We affirm the resolution of the IBP Board of Governors finding respondent administratively liable, but we modify the penalty imposed.

We note that the complainant and the IBP Board of Governors cited Section 1, Rule II of the 2004 Rules on Notarial Practice[28] as basis for the complained acts of respondent. However, we find Section 1 of Public Act No. 2103,[29] otherwise known as the Notarial Law, to be the applicable law at the time the complained acts took place. Nonetheless, as will be seen below, both laws provide for a similar provision on acknowledgment.

Section 1 of Public Act No. 2103 provides:

x x x x x x x x x

(a) **The acknowledgment shall be made before a notary public** or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. **The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed.** The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state. (Emphasis added.)

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[27] *Id.* at 35.

[28] A.M. No. 02-8-13-SC.

[29] An Act Providing for the Acknowledgment and Authentication of Instruments and Documents Without the Philippine Islands (1912).

Section 1, Rule II of the 2004 Rules on Notarial Practice emphasizes the requirement of affiant's personal appearance in an acknowledgment:

> Section 1. Acknowledgment. – "Acknowledgment" refers to an act in which an individual on a single occasion:
>
> **(a) appears in person before the notary public and presents an integrally complete instrument or document;**
>
> **(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;** and
>
> (c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis added.)

In fact, the Acknowledgment in the Deed of Absolute Sale explicitly states:

> BEFORE ME, a Notary Public for and in the City of Cavite, this day of 13 JAN [2003] in Cavite City, **personally appeared OSCAR M. BAYSAC** x x x **who made known to me to be the same person who executed the foregoing instrument and he acknowledged to me that the same is his own free act and voluntary deed.** x x x[30] (Emphasis added.)

Based on the foregoing, the party acknowledging the document must appear before the notary public or any other person authorized to take acknowledgments of instruments or documents.[31] In *Agbulos v. Viray*,[32] we held:

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[30] *Rollo,* p. 15.

[31] *Ang v. Gupana*, A.C. No. 4545, February 5, 2014, 715 SCRA 319, 327, citing *Coronado v. Felongco*, A.C. No. 2611, November 15, 2000, 344 SCRA 565, 568.

[32] A.C. No. 7350, February 18, 2013, 691 SCRA 1.

To be sure, a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.[33]

In this case, however, it would have been physically impossible for complainant to appear before respondent and sign the Deed of Absolute Sale on January 13, 2003. On that same day, complainant was with Ms. Angeles in Tanza, Cavite the whole day. Ms. Angeles, in her affidavit, confirmed this fact. Further, the NBI's findings in its Questioned Documents Report show that the signature in the Deed of Absolute Sale was not signed by complainant. These allegations remain unrebutted despite the opportunity given to complainant to do so.

Therefore, the affidavit of Ms. Angeles, and the findings of the NBI prove that respondent violated the Notarial Law when she notarized the Deed of Absolute Sale without the personal appearance of complainant. It was respondent's duty as notary public to require the personal appearance of the person executing the document to enable the former to verify the genuineness of his signature.[34] Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be.[35]

This Court has consistently held the following principle in a number of cases:

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[33] *Id.* at 7, citing *Legaspi v. Landrito*, A.C. No. 7091, October 15, 2008, 569 SCRA 1, 5 and *Dela Cruz v. Dimaano, Jr.*, A.C. No. 7781, September 12, 2008, 565 SCRA 1, 6.

[34] *Maligsa v. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 412.

[35] *Dela Cruz-Sillano v. Pangan*, A.C. No. 5851, November 25, 2008, 571 SCRA 479, 487-488.

Notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantial public interest, such that only those who are qualified or authorized may act as notaries public. Notarization of a private document converts the document into a public one making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[36]

Failing to comply with the Notarial Law, respondent was even very lenient and negligent in accepting the outdated CTC of complainant as competent evidence of identity. Although the Deed of Absolute Sale was notarized on January 13, 2003, respondent allowed the presentation of a CTC issued on May 26, 2000. Respondent should have been diligent enough to make sure that the person appearing before her is the same person acknowledging the document to be notarized. Respondent should have checked the authenticity of the evidence of identity presented to her. Further, she should not have relied on the CTC in view of the ease with which CTCs are obtained these days.[37] It should likewise be pointed out that the CTC is not included in the list of competent evidence of identity that notaries public should use in ascertaining the identity of persons appearing before them to have their documents notarized.[38]

We have emphasized that among the functions of a notary public is to guard against any illegal or immoral arrangements.[39] By affixing her notarial seal on the instrument, she converted

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[36] *Id.* at 488. *Cf. Legaspi v. Landrito*, *supra,* and *Dela Cruz v. Dimaano, Jr., supra* at 7.

[37] *Baylon v. Almo*, A.C. No. 6962, June 25, 2008, 555 SCRA 248, 253, citing *Dela Cruz v. Zabala*, A.C. No. 6294, November 17, 2004, 442 SCRA 407, 411.

[38] *Id.*

[39] *Cabanilla v. Cristal-Tenorio*, A.C. No. 6139, November 11, 2003, 415 SCRA 353, 361.

the Deed of Absolute Sale, from a private document into a public document. As a consequence, respondent, in effect, proclaimed to the world that: (1) all the parties therein personally appeared before her; (2) they are all personally known to her; (3) they were the same persons who executed the instrument; (4) she inquired into the voluntariness of execution of the instrument; and (5) they acknowledged personally before her that they voluntarily and freely executed the same.[40]

By notarizing a spurious document, respondent has made a mockery of the legal solemnity of the oath in an acknowledgment.[41] Respondent's failure to perform her duty as a notary public resulted not only in the damage to those directly affected by the notarized document, but also in undermining the integrity of a notary public, and in degrading the function of notarization.[42] Precisely because of respondent's act, complainant was unlawfully deprived of his property.

Respondent is reminded that as a lawyer commissioned as notary public, she is required to uphold her sacred duties appertaining to her office, such duties being dictated by public policy and impressed with public interest.[43] In *Ang v. Gupana*,[44] this Court held:

> As a lawyer commissioned as notary public, respondent is mandated to subscribe to the sacred duties appertaining to his office, such duties being dictated by public policy impressed with public interest. Faithful observance and utmost respect of the legal solemnity of the oath in an acknowledgment or *jurat* is sacrosanct. Simply put, such responsibility is incumbent upon respondent and failing therein, he

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[40] *Arrieta v. Llosa*, A.C. No. 4369, November 28, 1997, 282 SCRA 248, 252.

[41] *Maligsa v. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 414.

[42] *Dela Cruz-Sillano v. Pangan,* A.C. No. 5851, November 25, 2008, 571 SCRA 479, 488.

[43] *Maligsa v. Cabanting, supra*.

[44] A.C. No. 4545, February 5, 2014, 715 SCRA 319.

must now accept the commensurate consequences of his professional indiscretion. As the Court has held in *Flores v. Chua*,[45]

> Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands him not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.[46]

Since such responsibility is incumbent upon her, she must now accept the commensurate consequences of her professional indiscretion. Her act of certifying under oath an irregular Deed of Absolute Sale without ascertaining the identities of the persons executing the same constitutes gross negligence in the performance of duty as a notary public.[47]

More, as a lawyer, respondent breached Canon 1[48] of the Code of Professional Responsibility, particularly Canon 1.01.[49] By notarizing the Deed of Absolute Sale, she engaged in unlawful, dishonest, immoral or deceitful conduct.[50]

We modify, however, the penalty recommended by the IBP Board of Governors in order to be in full accord with existing jurisprudence. Based on existing jurisprudence, when a lawyer commissioned as a notary public fails to discharge his duties

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[45] A.C. No. 4500, April 30, 1999, 306 SCRA 465, 484-485.

[46] *Ang v. Gupana, supra* at 329, citing *Villarin v. Sabate, Jr.*, A.C. No. 3324, February 9, 2000, 325 SCRA 123.

[47] *Dela Cruz v. Zabala*, A.C. No. 6294, November 17, 2004, 442 SCRA 407, 413.

[48] CANON 1 – A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

[49] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[50] *Serzo v. Flores,* A.C. No. 6040, July 30, 2004, 435 SCRA 412.

as such, he is given the following penalties: (1) revocation of his notarial commission; (2) disqualification from being commissioned as a notary public for a period of two years; and (3) suspension from the practice of law for one year.[51]

WHEREFORE, this Court hereby finds Atty. Eloisa M. Aceron-Papa **GUILTY** of violating the Notarial Law and the Code of Professional Responsibility. Accordingly, this Court **REVOKES** her incumbent commission, if any; **PROHIBITS** her from being commissioned as a notary public for two (2) years; and **SUSPENDS** her from the practice of law for one (1) year, effective immediately. She is further **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Resolution be furnished to the Office of the Bar Confidant, to be appended to the respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.,* concur.

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[51] *Agbulos v. Viray*, *supra* note 32 at 9, citing *Isenhardt v. Real*, A.C. No. 8254, February 15, 2012, 666 SCRA 20, 28; *Linco v. Lacebal*, A.C. No. 7241, 17 October 2011, 659 SCRA 130, 136; *Lanuzo v. Bongon*, A.C. No. 6737, September 23, 2008, 566 SCRA 214, 218.

THIRD DIVISION

[A.M. No. P-16-3515, August 10, 2016]
(Formerly OCA I.P.I. No. 15-4401-P)

ARNOLD G. TECSON, *complainant, vs.* **ATTY. MARICEL LILLED ASUNCION-ROXAS, Clerk of Court VI, Branch 23, Regional Trial Court, Trece Martires City, Cavite,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; GROSS NEGLECT OF DUTY; FAILURE TO TRANSMIT CRIMINAL RECORDS TO THE COURT OF APPEALS FOR ONE YEAR AND THREE MONTHS; PROPER PENALTY IS A FINE OF ₱15,000.00.— Section 8, Rule 122 of the Rules of Court pertinently states that: Sec. 8. *Transmission of papers to appellate court upon appeal*. – **Within five (5) days from the filing of the notice of appeal,** the clerk of the court with whom the notice of appeal was filed must transmit to the clerk of court of the appellate court the complete record of the case, together with said notice. x x x The respondent's failure to transmit the records of Criminal Case No. TMCR-038-08 to the CA for one year and three months is unreasonably long; it unquestionably amounts to gross neglect of duty considering that the case involves the right of an accused to appeal his conviction to the CA. x x x [T]he Court deems it proper to increase the amount of fine recommended by the OCA to be imposed upon the respondent from ₱5,000.00 to ₱15,000.00.

D E C I S I O N

REYES, *J.*:

Before the Court is an administrative complaint[1] filed by Arnold G. Tecson (complainant) with the Office of the Court

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

Administrator (OCA) against Atty. Maricel Lilled Asuncion-Roxas (respondent), Clerk of Court VI assigned at the Regional Trial Court (RTC) of Trece Martires City, Cavite, Branch 23, for gross neglect of duty.

The Facts

On January 31, 2008, an information was filed with the RTC of Trece Martires City against the complainant for violation of Section 5(a) of Republic Act No. 9262[2] upon the complaint filed by his wife.[3] The case was docketed as Criminal Case No. TMCR-038-08 and was raffled to Branch 23.

At the time of the institution of the said criminal case, the complainant was employed as a Draftsman in Doha, Qatar under a six-year contract with Qatar Petroleum, effective until September 3, 2011.[4]

Consequently, the Presiding Judge of Branch 23 of the RTC of Trece Martires City issued a Hold-Departure Order against the complainant. The complainant's name was then included in the Hold Departure List[5] of the Bureau of Immigration and in the Look-Out List[6] in the Passport Division of the Department of Foreign Affairs.[7]

The complainant filed a motion for reconsideration of the Hold-Departure Order. He likewise sought to be allowed temporarily to leave the country during the pendency of the criminal proceedings under such terms or conditions as may be imposed by the trial court since he needed to report back to his work in Doha, Qatar. His motion was denied by the Presiding Judge of Branch 23.[8]

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[2] Anti-Violence Against Women and Their Children Act of 2004.

[3] *Rollo*, p. 1.

[4] *Id*. at 2.

[5] *Id*. at 11.

[6] *Id*. at 12.

[7] *Id*. at 2.

[8] *Id*.

On October 10, 2013, the RTC of Trece Martires City, Branch 23, rendered a Decision[9] in the criminal case finding the complainant guilty beyond reasonable doubt of the offense charged. A copy of the said decision was received by the complainant on November 4, 2013. On even date, the complainant filed a Notice of Appeal[10] with the RTC of Trece Martires City, Branch 23.[11]

The complainant then sent a letter dated October 22, 2014 to the Court of Appeals (CA) inquiring about the status of his appeal from the RTC's Decision dated October 10, 2013. In a letter[12] dated November 10, 2014, Medella A. Carrera, Chief of the Criminal Cases Section of the CA, informed the complainant that as of said date, the records of Criminal Case No. TMCR-038-08 had not been received by the CA. The complainant was then advised to ask the RTC of Trece Martires City for a certification as to the status of his appeal.

In a letter[13] dated January 23, 2015, the complainant requested the Clerk of Court of the RTC of Trece Martires City, Branch 23, herein respondent, to transmit the records of Criminal Case No. TMCR-038-08 to the CA within five days. However, the respondent still failed to transmit the records of Criminal Case No. TMCR-038-08 to the CA. The complainant claims that since he could not file with the CA any motion to lift the Hold-Departure Order issued by the RTC, he could not accept the employment offered to him in Lagos, Nigeria.[14]

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[9] Rendered by Executive Judge Aurelio G. Icasiano, Jr.; *id.* at 13-19.

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

[11] *Id.* at 3.

[12] *Id.* at 26.

[13] *Id.* at 29.

[14] *Id.* at 4.

On March 18, 2015, the complainant filed an affidavit-complaint[15] with the OCA charging the respondent with gross neglect of duty. In the Indorsement[16] dated March 26, 2015, the OCA required the respondent to submit a comment within 10 days from notice. On May 18, 2015, the respondent submitted her comment.[17]

The respondent claims that upon the complainant's filing of his notice of appeal and payment of the required appeal fees, immediately handed over the same to the clerk of Branch 23 assigned to criminal cases.[18] She explains that the delay in the transmittal of the records of Criminal Case No. TMCR-038-08 to the CA was inevitable due to her workload as a Clerk of Court in a single sala court. She avers that her workload was duplicated with the designation of an assisting Judge in Branch 23.[19]

Considering her volume of work, the respondent claims that she instructed the clerk assigned to criminal cases to write the corresponding pages in the records of Criminal Case No. TMCR-038-08 and to make a list of exhibits so as to facilitate the preparation of the records to be transmitted to the CA. She alleged that the transcripts of stenographic notes (TSN) were misplaced by the clerk assigned to criminal cases and that she gave ample time to the clerk to locate the TSNs, but the latter failed to do so. She insinuates that she had already forwarded the records of Criminal Case No. TMCR-038-08 to the CA *sans* the TSNs.[20]

The respondent further claims that she had no intention to cause injury to the complainant or taint the administration of

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[15] *Id*. at 1-8.

[16] *Id*. at 30.

[17] *Id*. at 31-36.

[18] *Id*. at 32.

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

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

justice. She states that the incident could have been avoided should the RTC of Trece Martires City had a manageable case load.[21]

Findings of the OCA

On April 4, 2016, the Court Administrator issued a Report,[22] recommending that the respondent be found guilty of gross neglect of duty and that she be fined in the amount of ₱5,000.00 with a stern warning that a repetition of the same or any similar infraction shall be dealt with more severely.

The OCA stated that the duty of the clerk of court of the trial court to transmit to the CA the complete record of. the criminal case within five days from the filing of the notice of appeal from the judgment sought to be reviewed is mandatory.[23] It pointed out that the defenses raised by the respondent, such as heavy workload and missing TSNs, are downright flimsy which will not serve to exculpate her from administrative sanctions.[24]

The Issue

The issue for the Court's resolution is whether the respondent is guilty of gross neglect of duty

Ruling of the Court

After a careful review of the records of this case, the Court adopts the findings and recommendations of the OCA.

Section 8, Rule 122 of the Rules of Court pertinently states that:

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[21] *Id*. at 35.

[22] *Id*. at 56-62.

[23] *Id*. at 60-61.

[24] *Id*. at 61.

Sec. 8. *Transmission of papers to appellate court upon appeal*. — **Within five (5) days from the filing of the notice of appeal**, the clerk of the court with whom the notice of appeal was filed must transmit to the clerk of court of the appellate court the complete record of the case, together with said notice. The original and three copies of the transcript of stenographic notes, together with the records, shall also be transmitted to the clerk of the appellate court without undue delay. The other copy of the transcript shall remain in the lower court. (Emphasis ours)

It appears that the respondent was only able to transmit the complete records of Criminal Case No. TMCR-038-08 to the CA on February 23, 2015[25] — more than a year after the complainant filed his notice of appeal on November 4, 2013. Thus, it cannot be gainsaid that the respondent was indeed remiss in her duty as a clerk of court. The respondent's failure to transmit the records of Criminal Case No. TMCR-038-08 to the CA for one year and three months is unreasonably long; it unquestionably amounts to gross neglect of duty considering that the case involves the right of an accused to appeal his conviction to the CA.

The respondent's excuse of heavy workload deserves scant consideration. The Court notes that trial courts are indeed heavily laden with workload due to the number of cases filed and pending before them. It does not, however, serve as a convenient excuse to evade administrative liability; otherwise, every government employee faced with negligence and dereliction of duty would resort to that excuse to evade punishment, to the detriment of the public service.[26]

Time and again, the Court has reminded court personnel to perform their assigned tasks promptly and with great care and diligence considering the important role they play in the administration of justice.[27] Any delay in the administration of

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[25] *Id.* at 41.

[26] *Judge Marquez v. Pablico*, 579 Phil. 25, 31 (2008).

[27] *Añonuevo v. Judge Rubio*, 479 Phil. 336, 339 (2004).

justice, no matter how brief, deprives litigants of their right to a speedy disposition of their case. It undermines the public's faith in the judiciary.[28]

In *Judge Fuentes v. Atty. Fabro*,[29] the Court found the clerk of court guilty of gross neglect of duty in failing to transmit to the CA the records of several civil cases within 30 days after the perfection of the appeal pursuant to Section 10, Rule 41 of the Rules of Court. The clerk of court in said case only transmitted the records two years after the order directing their transmittal to the CA. Accordingly, the Court imposed upon him a fine of ₱20,000.00.

In *Bellena v. Judge Perello*,[30] the Court found the respondent judge guilty of undue delay in transmitting the records of a civil case to the CA and imposed upon her the penalty of fine in the amount of ₱20,000.00. The respondent judge failed to transmit the records of the case for almost nine months.

In *Goforth v. Huelar, Jr.*,[31] the Court found therein respondent guilty of gross neglect of duty in failing to transmit the records of a civil case to the CA within the required period and imposed upon him a fine in the amount of ₱15,000.00. Therein respondent's delay in the transmittal of the records to the CA was more than three years.

In this case, considering that what the respondent failed to transmit to the CA was the record of a criminal case, thereby prolonging the complainant's appeal of his conviction, the Court deems it proper to increase the amount of fine recommended by the OCA to be imposed upon the respondent from ₱5,000.00 to ₱15,000.00.

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[28] *Lao v. Judge Mabutin, et al.*, 580 Phil. 369, 377 (2008).

[29] 662 Phil. 618 (2011).

[30] 490 Phil. 534 (2005).

[31] 581 Phil. 309 (2008).

WHEREFORE, the Court finds respondent Atty. Maricel Lilled Asuncion-Roxas, Clerk of Court VI assigned to Branch 23 of the Regional Trial Court of Trece Martires City, Cavite, **GUILTY** of gross neglect of duty for the delay in transmitting to the Court of Appeals the record of Criminal Case No. TMCR-038-08 entitled *People of the Philippines v. Arnold G. Tecson*. The Court hereby imposes on her a **FINE** of Fifteen Thousand Pesos (₱15,000.00) to be paid within a period of ten (10) days upon receipt hereof, with a warning that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez*, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 185638. August 10, 2016]

HONORABLE ALVIN P. VERGARA, IN HIS CAPACITY AS CITY MAYOR OF CABANATUAN CITY, and SANGGUNIANG PANLUNGSOD OF CABANATUAN CITY, *petitioners, vs.* **LOURDES MELENCIO S. GRECIA, REPRESENTED BY RENATO GRECIA, AND SANDRA MELENCIO IN REPRESENTATION OF MA. PAZ SALGADO VDA. DE MELENCIO, CONCHITA MELENCIO, CRISTINA MELENCIO and LEONARDO MELENCIO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PD 1529 (LAWS ON REGISTRATION OF PROPERTIES); SECTION 50 CONTEMPLATES ROADS AND STREETS

IN A SUBDIVIDED PROPERTY, NOT PUBLIC THOROUGHFARES BUILT ON A PRIVATE PROPERTY TAKEN FROM AN OWNER FOR PUBLIC PURPOSE UPON PAYMENT OF JUST COMPENSATION.— [In] the case of *Republic of the Philippines v. Ortigas and Company Limited Partnership*, the Court ruled that x x x Section 50 [of PD 1529] contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street. x x x Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings. x x x [W]hen the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation, thus: Section 9. Private property shall not be taken for public use without just compensation. As with all laws, Section 50 of the Property Registration Decree cannot be interpreted to mean a license on the part of the government to disregard constitutionally guaranteed rights.

2. **ID.; POWER OF EMINENT DOMAIN; REQUISITES.—** There is no question raised concerning the right of the petitioners here to acquire the subject land under the power of eminent domain. But the exercise of such right is not unlimited, for two mandatory requirements should underlie the Government's exercise of the power of eminent domain namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.

3. **ID.; ID.; JUST COMPENSATION; DETERMINATION THEREOF IS A JUDICIAL FUNCTION.—** The determination of just compensation in eminent domain cases is a judicial function and any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

4. ID.; ID.; ID.; INTEREST; PROPER TO COMPENSATE FOR THE DELAY IN THE PAYMENT OF COMPENSATION FOR PROPERTY ALREADY TAKEN.— Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just", must also be made without delay. Without prompt payment, compensation cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income. x x x The rationale for imposing the interest is to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking. There is a need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. Settled is the rule that the award of interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades. Based on a judicious review of the records and application of jurisprudential rulings, legal interest shall be pegged at the rate of twelve percent (12%) *per annum*, reckoned from the time of the filing of the complaint for expropriation, which in this case is on December 29, 2005, the date when the respondents filed a petition for *mandamus* to compel the petitioners to comply with the MOA. Thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the new legal rate of six percent (6%) *per annum*, conformably with the modification on the rules respecting interest rates introduced by the Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.

5. ID.; ID.; AWARD OF EXEMPLARY DAMAGES AND ATTORNEY'S FEES PROPER DUE TO TAKING OF RESPONDENTS' LAND WITHOUT EXPROPRIATION PROCEEDINGS AND WITHOUT PAYMENT OF JUST COMPENSATION; CASE AT BAR.— The award of exemplary damages and attorney's fees is warranted. The taking of the respondents' subject land without the benefit of expropriation proceedings and without payment of just compensation, clearly resulted in an "expropriate now, pay later" situation, which the Court abhors. It has been more than two

> decades since the petitioners took the subject land without a timely expropriation proceeding and without the petitioners exerting efforts to negotiate with the respondents. This irregularity will not proceed without any consequence. The Court had repeatedly ruled that the failure of the government to initiate an expropriation proceeding to the prejudice of the landowner may be corrected with the awarding of exemplary damages, attorney's fees and costs of litigation. x x x Hence, in order to serve as a deterrent to the State for failing to institute such proceedings within the prescribed period under the law, the award of exemplary damages and attorney's fees is in order. x x x In accordance with existing jurisprudence, the award of exemplary damages in the amount of ₱200,000.00 is proper, as well as attorney's fees equivalent to one percent (1%) of the total amount due.

APPEARANCES OF COUNSEL

Edgardo G. Villarin for petitioners.
Lydia B. Hipolito for respondents.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] seeking to annul and set aside the Decision[2] dated August 8, 2008 and the Resolution[3] dated December 5, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 97851. The CA affirmed with modification the Order[4] dated November 8, 2006 of the Regional Trial Court (RTC) of Cabanatuan City, Branch 86, and the Order[5]

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

[2] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Regalado E. Maambong and Normandie B. Pizarro concurring; *id*. at 129-145.

[3] *Id*. at 160-162.

[4] Rendered by Presiding Judge Raymundo Z. Annang; *id*. at 81-83.

[5] Rendered by Presiding Judge Virgilio G. Caballero; *id*. at 100-101.

dated January 30, 2007 issued by the RTC of Cabanatuan City, Branch 30, in Civil Case No. 5078, and reduced the amount to be paid by Honorable Julius Cesar Vergara (Mayor Vergara), in his capacity as Mayor of Cabanatuan City, and the *Sangguniang Panlungsod* of Cabanatuan (*Sanggunian*) (petitioners) from Ten Million Pesos (₱10,000,000.00) to Two Million Five Hundred Fifty-Four Thousand Three Hundred Thirty-Five Pesos (₱2,554,335.00) representing 15% of the total value of the property of Lourdes Melencio S. Grecia (Lourdes), represented by Renato Grecia, and Sandra Melencio, in representation of Ma. Paz, Conchita, Cristina and Leonardo, all surnamed Melencio (respondents).

The Facts

The subject of this petition is a parcel of land covered by Transfer Certificate of Title No. T-101793, with an area of 7,420 square meters, more or less, situated in Barangay Barrera, Cabanatuan City, and registered under the name of the respondents.[6]

The record showed that sometime in 1989, the subject land was taken by the *Sanggunian* for road-right-of-way and road widening projects. Despite the taking of the subject land and the completion of the road widening projects, the *Sanggunian* failed to tender the just compensation to the respondents. Upon the request of Lourdes, the *Sanggunian* created an appraisal committee, composed of City Assessor of Cabanatuan Lorenza L. Esguerra as Chairman, with City Treasurer Bernardo C. Pineda and City Engineer Mac Arthur C. Yap as members, to determine the proper amount of just compensation to be paid by the *Sanggunian* for the subject land. The Appraisal Committee then issued Resolution No. 20-S-2001[7] recommending the payment of ₱2,295.00 per sq m as just compensation.[8]

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[6] *Id*. at 130.

[7] *Id*. at 33.

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

Thereafter, the *Sanggunian* issued Resolution No. 148-2000[9] authorizing Mayor Vergara to negotiate, acquire, purchase and accept properties needed by the *Sanggunian* for its project.

Pursuant to the said resolution, on December 4, 2001, Mayor Vergara executed a Memorandum of Agreement[10] (MOA) with Lourdes as Attorney-in-fact of the respondents, whereby the *Sanggunian* bound itself to pay the respondents the amount of ₱17,028,900.00 in 12 years at the rate of ₱1,419,075.00 every year starting the first quarter of 2002 as payment of the subject land.

More than four years had lapsed after the signing of the MOA but no payment was ever made by the petitioners to the respondents despite the fact that the subject land was already taken by the petitioners and was being used by the constituents of the City of Cabanatuan.[11]

Despite personal and written demands,[12] the petitioners still failed to pay the respondents the just and fair compensation of the subject land.[13]

In a letter[14] dated November 18, 2005, Mayor Vergara said that the *Sanggunian* denied the ratification of the MOA per its Resolution No. 129-2002[15] on the ground of fiscal restraint or deficit of the *Sanggunian*. In view of this resolution, Mayor Vergara claimed that the said MOA could neither be enforced, nor bind the *Sanggunian*.

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[9] *Id.* at 36.

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

[11] *Id.* at 131-132.

[12] *Id.* at 37-38.

[13] *Id.* at 132.

[14] *Id.* at 39.

[15] *Id.* at 40.

Aggrieved, on December 29, 2005, the respondents filed a petition for *mandamus*[16] before the RTC of Cabanatuan City, which was raffled to Branch 86.

On September 18, 2006, RTC-Branch 86 rendered its Order[17] in favor of the respondents, thus:

> WHEREFORE, let a writ of mandamus be issued compelling [the petitioners] to pay the [respondents] the following sums of money:
>
> 1. Php17,028,900.00 as just compensation of their property taken by the *Sanggunian* plus accrued legal interest thereon from the filing of this case until fully paid;
> 2. Php50,000.00 as attorney's fees; and
> 3. Php50,000.00 as actual expenses and damages.
>
> SO ORDERED.[18]

The petitioners immediately filed their appeal[19] before the CA, docketed as CA-G.R. SP No. 98397. However, before the records of appeal were submitted to the CA, the respondents filed a Motion for Partial Execution[20] before the RTC-Branch 86.[21]

On November 8, 2006, the RTC-Branch 86 issued an Order[22] granting the respondents' motion and thereby ordering the petitioners to pay the sum of ₱10,000,000.00 as partial execution of the decision.

The petitioners then filed a motion for inhibition and a motion for reconsideration.[23]

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[16] *Id*. at 26-32.

[17] *Id*. at 60-64.

[18] *Id*. at 64.

[19] *Id*. at 65-67.

[20] *Id*. at 68-70.

[21] *Id*. at 133-134.

[22] *Id*. at 81-83.

[23] *Id*. at 84-88.

On November 17, 2006, RTC-Branch 86 issued an Order granting the motion for inhibition which subsequently led to the assignment by raffle of the case to RTC-Branch 30.[24]

On January 30, 2007, RTC-Branch 30 issued an Order[25] denying the petitioners' motions.

On February 7, 2007, a writ of execution was issued. Accordingly, a Notice of Garnishment was issued to the manager of United Coconut Planters Bank of Cabanatuan City.[26]

Aggrieved, the petitioners filed a Petition for *Certiorari* with urgent Motion for the Issuance of a Temporary Restraining Order and Writ of Preliminary Injunction[27] before the CA.

In a Resolution[28] dated February 26, 2007, the CA granted the petitioners' prayer for an injunctive relief and enjoined the RTC-Branch 30 Presiding Judge and Sheriff from enforcing the said writ of execution and orders.

On appeal, the CA, in its Decision[29] dated August 8, 2008, affirmed the trial court's order but modified the same by reducing the amount to be paid by the petitioners from ₱10,000,000.00 to ₱2,554,335.00 representing 15% of the value of the property as provided by law.[30]

Undeterred, the petitioners filed a motion for reconsideration[31] but it was denied.[32] Hence, this petition.

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[24] *Id*. at 135.

[25] *Id*. at 100-101.

[26] *Id*. at 136.

[27] *Id*. at 102-121.

[28] *Id*. at 123-127

[29] *Id*. at 129-145.

[30] *Id*. at 144.

[31] *Id*. at 146-150.

[32] *Id*. at 160-162.

For their part, the petitioners argue that the subject land is a subdivision road which is beyond the commerce of man as provided for in Section 50 of Presidential Decree (P.D.) No. 1529.[33] Thus, the said contract entered into by Mayor Vergara with the respondents is null and void, and there is no obligation on the part of the petitioners to pay the respondents.[34]

The Issue

The main issue before this Court is whether there is propriety in the partial execution of the judgment pending appeal.

Ruling of the Court

The petition is bereft of merit.

To begin with, the Court notes that there has already been a final judgment in CA-G.R. SP No. 98397. The CA Third Division issued a Resolution[35] dated March 14, 2008 dismissing the petitioners' appeal on the ground of lack of jurisdiction stating that the issues that were raised are pure questions of law. The petitioners filed a motion for reconsideration but it was also denied;[36] hence, the case was elevated to this Court which was docketed as G.R. No. 186211. However, in a Resolution dated June 22, 2011, the Court Second Division likewise denied the petition.

It is uncontroverted that the subject land was taken by the petitioners without paying any compensation to the respondents

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[33] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES. Approved on June 11, 1978.

[34] *Rollo*, p. 13.

[35] Penned by Associate Justice Marina L. Buzon, with Associate Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo concurring.

[36] Resolution dated January 23, 2009 issued by the CA Special Former Third Division.

that is too long to be ignored. The petitioners, however, argue that they are not obliged to pay the respondents because the subject land is burdened by encumbrances[37] which showed that it is a subdivision lot which is beyond the commerce of man. Thus, the MOA between the petitioners and the respondents is null and void. To support their argument, they invoked Section 50 of P.D. No. 1529.[38]

Essentially, the sole issue for resolution is whether the petitioners are liable for just compensation. Hence, the pertinent point of inquiry is whether the subject land of the respondents is beyond the commerce of man as provided for in Section 50 of P.D. No. 1529.

Meanwhile, a look at the petition in CA-G.R. SP No. 98397, now G.R. No. 186211, would show that the petitioners interposed the same issues in their appeal: (1) the subject land is not within the commerce of men, hence, the MOA is void; (2) the petitioners are under estoppel to deny its liability under the MOA; (3) Mayor Vergara has no authority to sign the MOA prior to its approval by the *Sanggunian*; and (4) there is no basis for the lower court to award attorney's fees and damages.[39]

Since these issues did not merit the attention of the Court in G.R. No. 186211, the Court will now put all these issues to rest.

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[37] (a) The conditions imposed by Section 4, Rule 74 of the Rules of Court; and

(b) that except by way of donation in favor of the national government, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of Court of First Instance of the Province or City in which the land is situated (Fr. T-69586). *Rollo*, pp. 9-10.

[38] *Id.* at 9-13.

[39] *See* CA Third Division Resolution dated March 14, 2008 in CA-G.R. SP No. 98397, p. 5.

ONE. The alleged encumbrance in the respondents' title and the interpretation and application of Section 50[40] of P.D. No. 1529 are no longer novel since this Court had already made a definitive ruling on the matter in the case of *Republic of the Philippines v. Ortigas and Company Limited Partnership,*[41] where the Court ruled that therein petitioners' reliance on Section 50 of P.D. No. 1529 is erroneous since it contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

Section 50 contemplates roads and streets in a subdivided property, not public thoroughfares built on a private property that was taken from an owner for public purpose. A public thoroughfare is not a subdivision road or street.

x x x x x x x x x

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[40] Sec. 50. ***Subdivision and consolidation plans.*** Any owner subdividing a tract of registered land into lots which do not constitute a subdivision project as defined and provided for under P.D. No. 957, shall file with the Commissioner of Land Registration or with the Bureau of Lands a subdivision plan of such land on which all boundaries, streets, passageways and waterways, if any, shall be distinctly and accurately delineated.

If a subdivision plan, be it simple or complex, duly approved by the Commissioner of Land Registration or the Bureau of Lands together with the approved technical descriptions and the corresponding owner's duplicate certificate of title is presented for registration, the Register of Deeds shall, without requiring further court approval of said plan, register the same in accordance with the provisions of the Land Registration Act, as amended: Provided, however, that the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of the national government, province, city or municipality, no portion of any street, passageway, waterway or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the approval of the Court of First Instance of the province or city in which the land is situated.

[41] G.R. No. 171496, March 3, 2014, 717 SCRA 601.

Delineated roads and streets, whether part of a subdivision or segregated for public use, remain private and will remain as such until conveyed to the government by donation or through expropriation proceedings. An owner may not be forced to donate his or her property even if it has been delineated as road lots because that would partake of an illegal taking. He or she may even choose to retain said properties. If he or she chooses to retain them, however, he or she also retains the burden of maintaining them and paying for real estate taxes.

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x x x [W]hen the road or street was delineated upon government request and taken for public use, as in this case, the government has no choice but to compensate the owner for his or her sacrifice, lest it violates the constitutional provision against taking without just compensation, thus:

> Section 9. Private property shall not be taken for public use without just compensation.

As with all laws, Section 50 of the Property Registration Decree cannot be interpreted to mean a license on the part of the government to disregard constitutionally guaranteed rights.[42] (Citations omitted)

Apparently, the subject land is within the commerce of man and is therefore a proper subject of an expropriation proceeding. Pursuant to this, the MOA between the petitioners and the respondents is valid and binding. Thus, there is no need to discuss the matter of the petitioners' estoppel or the authority of Mayor Vergara to sign the MOA.

TWO. The petitioners are liable to pay the full market value of the subject land.

Without a doubt, the respondents are entitled to the payment of just compensation. The right to recover just compensation is enshrined in the Bill of Rights; Section 9, Article III of the 1987 Constitution states that no private property shall be taken for public use without just compensation.

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[42] *Id.* at 616-620.

There is no question raised concerning the right of the petitioners here to acquire the subject land under the power of eminent domain. But the exercise of such right is not unlimited, for two mandatory requirements should underlie the Government's exercise of the power of eminent domain namely: (1) that it is for a particular public purpose; and (2) that just compensation be paid to the property owner. These requirements partake the nature of implied conditions that should be complied with to enable the condemnor to keep the property expropriated.[43]

Undisputedly, in this case, the purpose of the condemnation is public but there was no payment of just compensation to the respondents. The petitioners should have first instituted eminent domain proceedings and deposit with the authorized government depositary an amount equivalent to the assessed value of the subject land before it occupied the same. Due to the petitioners' omission, the respondents were constrained to file inverse condemnation proceedings to demand the payment of just compensation before the trial court. From 1989 until the present, the respondents were deprived of just compensation, while the petitioners continuously burdened their property.

The determination of just compensation in eminent domain cases is a judicial function and any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.[44]

An evaluation of the circumstances of this case and the parties' arguments showed that the petitioners acted oppressively in their position to deny the respondents of the just compensation

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[43] *Republic of the Philippines v. Heirs of Saturnino Q. Borbon*, G.R. No. 165354, January 12, 2015, 745 SCRA 40, 50-51.

[44] *National Power Corporation v. Spouses Saludares*, 686 Phil. 967, 978 (2012), citing *National Power Corporation v. Bagui, et al.*, 590 Phil. 424, 432 (2008).

that the immediate taking of their property entailed. The Court cannot allow the petitioners to profit from its failure to comply with the mandate of the law. To adequately compensate the respondents from the decades of burden on their land, the petitioners should be made to pay the full value of ₱17,028,900.00 representing the just compensation of the subject land at the time of the filing of the instant complaint when the respondents made a judicial demand for just compensation.

THREE. The undue delay of the petitioners to pay the just compensation brought about the basis for the grant of interest.

Apart from the requirement that compensation for expropriated land must be fair and reasonable, compensation, to be "just", must also be made without delay. Without prompt payment, compensation cannot be considered "just" if the property is immediately taken as the property owner suffers the immediate deprivation of both his land and its fruits or income.[45]

Obviously, the delay in payment of just compensation occurred and cannot at all be disputed. The undisputed fact is that the respondents were deprived of their lands since 1989 and have not received a single centavo to date. The petitioners should not be allowed to exculpate itself from this delay and should suffer all the consequences the delay has caused.

The Court has already dealt with cases involving similar background and issues, that is, the government took control and possession of the subject properties for public use without initiating expropriation proceedings and without payment of just compensation, and the landowners failed for a long period of time to question such government act and later instituted actions to recover just compensation with damages.

Here, the records showed that the respondents fully cooperated with the petitioners' road widening program, and allowed their landholdings to be taken by the petitioners without any questions.

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[45] *Apo Fruits Corporation, et al. v. Land Bank of the Philippines*, 647 Phil. 251, 273 (2010).

The present case therefore is not one where substantial conflict arose on the issue of whether expropriation is proper; the respondents voluntarily submitted to expropriation and surrendered their landholdings, and never contested the valuation that was made. Apparently, had the petitioners paid the just compensation on the subject land, there would have been no need for this case. But, as borne by the records, the petitioners refused to pay, telling instead that the subject land is beyond the commerce of man. Hence, the respondents have no choice but to file actions to claim what is justly due to them. Consequently, interest must be granted to the respondents.

The rationale for imposing the interest is to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.[46] There is a need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken.[47] Settled is the rule that the award of interest is imposed in the nature of damages for delay in payment which in effect makes the obligation on the part of the government one of forbearance. This is to ensure prompt payment of the value of the land and limit the opportunity loss of the owner that can drag from days to decades.[48]

Based on a judicious review of the records and application of jurisprudential rulings, legal interest shall be pegged at the rate of twelve percent (12%) *per annum*, reckoned from the time of the filing of the complaint for expropriation, which in this case is on December 29, 2005, the date when the respondents filed a petition for *mandamus* to compel the petitioners to comply

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[46] *Secretary of the Department of Public Works and Highways and District Engineer Celestino R. Contreras v. Spouses Heracleo and Ramona Tecson*, G.R. No. 179334, April 21, 2015.

[47] *Id*.

[48] *Sy v. Local Government of Quezon City*, 710 Phil. 549, 559 (2013), citing *Land Bank of the Philippines v. Rivera, et al.*, 705 Phil. 139, 145 (2013).

with the MOA. Thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the new legal rate of six percent (6%) *per annum*, conformably with the modification on the rules respecting interest rates introduced by the Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013.[49] To clarify, this incremental interest is not granted on the computed just compensation; rather, it is a penalty imposed for damages incurred by the landowner due to the delay in its payment.[50]

FOURTH. The award of exemplary damages and attorney's fees is warranted.

The taking of the respondents' subject land without the benefit of expropriation proceedings and without payment of just compensation, clearly resulted in an "expropriate now, pay later" situation, which the Court abhors. It has been more than two decades since the petitioners took the subject land without a timely expropriation proceeding and without the petitioners exerting efforts to negotiate with the respondents.

This irregularity will not proceed without any consequence. The Court had repeatedly ruled that the failure of the government to initiate an expropriation proceeding to the prejudice of the landowner may be corrected with the awarding of exemplary damages, attorney's fees and costs of litigation.[51]

Evidently, the petitioners' oppressive taking of the subject land for a very long period of time surely resulted in pecuniary loss to the respondents. The petitioners cannot now be heard to claim that they were simply protecting their interests when they stubbornly defended their erroneous arguments before the courts. The more truthful statement is that they adopted a grossly

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[49] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267, 279-280 (2013).

[50] *Land Bank of the Philippines v. Lajom*, G.R. No. 184982, August 20, 2014, 733 SCRA 511, 524.

[51] *Secretary of the Department of Public Works and Highways and District Engineer Celestino R. Contreras v. Spouses Heracleo and Ramona Tecson*, *supra* note 46.

unreasonable position and the unwanted developments that followed, particularly the attendant delay, should be directly chargeable to them.

Indeed, the respondents were deprived of their subject land for road widening programs, were uncompensated, and were left without any expropriation proceeding undertaken. Hence, in order to serve as a deterrent to the State for failing to institute such proceedings within the prescribed period under the law, the award of exemplary damages and attorney's fees is in order.

In sum, the respondents have waited too long before the petitioners fully pay the amount of the just compensation due them. Since the trial court had already made the proper determination of the amount of just compensation in accordance with law and to forestall any further delay in the resolution of this case, it is but proper to order the petitioners to pay in full the amount of ₱17,028,900.00 representing the just compensation of the subject land. Furthermore, the respondents are entitled to an additional grant of interest, exemplary damages and attorney's fees. In accordance with existing jurisprudence, the award of exemplary damages in the amount of ₱200,000.00 is proper, as well as attorney's fees equivalent to one percent (1%) of the total amount due.

WHEREFORE, the petition is **DENIED**. The Decision dated August 8, 2008 and the Resolution dated December 5, 2008 of the Court of Appeals in CA-G.R. SP No. 97851 are **AFFIRMED with MODIFICATION**. Honorable Alvin P. Vergara, in his capacity as Mayor of Cabanatuan City, and the *Sangguniang Panlungsod* of Cabanatuan are hereby ordered to **PAY** Lourdes Melencio S. Grecia, represented by Renato Grecia, and Sandra Melencio, in representation of Ma. Paz Salgado Vda. De Melencio, Conchita Melencio, Cristina Melencio and Leonardo Melencio the amount of Seventeen Million Twenty-Eight Thousand Nine Hundred Pesos (₱17,028,900.00) representing the just compensation of the subject land, exemplary damages in the amount of Two Hundred Thousand Pesos (₱200,000.00), and attorney's fees equivalent to one percent (1%) of the amount due. Lastly, legal interest shall be pegged at the rate of twelve

percent (12%) *per annum*, from the time of judicial demand on December 29, 2005. Thereafter, or beginning July 1, 2013, until fully paid, just compensation shall earn interest at the new legal rate of six percent (6%) *per annum*.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez*, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 189081. August 10, 2016]

GLORIA S. DY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, MANDY COMMODITIES CO., INC., represented by its President, WILLIAM MANDY,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; CONCEPT OF CIVIL LIABILITY *EX DELICTO* OR CIVIL LIABILITY ARISING FROM CRIME.— [O]ur jurisdiction recognizes that a crime has a private civil component. Thus, while an act considered criminal is a breach of law against the State, our legal system allows for the recovery of civil damages where there is a private person injured by a criminal act. It is in recognition of this dual nature of a criminal act that our Revised Penal Code provides that every person criminally liable is also civilly liable. This is the concept of civil liability *ex delicto*. This is echoed by the New Civil Code when it recognizes acts or omissions punished by law as a separate source of obligation. This is reinforced by Article 30 of the same code which refers to the filing of a separate civil action to demand civil liability arising from a criminal

offense. The Revised Penal Code fleshes out this civil liability in Article 104 which states that it includes restitution, reparation of damage caused and indemnification for consequential damages.

2. REMEDIAL LAW; RULES OF PROCEDURE FOR CRIMINAL AND CIVIL ACTIONS INVOLVING THE SAME ACT OR OMISSION; THE EXTINCTION OF THE CRIMINAL ACTION DOES NOT NECESSARILY RESULT IN THE EXTINCTION OF THE CORRESPONDING CIVIL ACTION.— Our Rules of Court prescribes a kind of fusion such that, subject to certain defined qualifications, when a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense is deemed instituted as well. However, there is an important difference between civil and criminal proceedings that require a fine distinction as to how these twin actions shall proceed. These two proceedings involve two different standards of proof. A criminal action requires proof of guilt beyond reasonable doubt while a civil action requires a lesser quantum of proof, that of preponderance of evidence. This distinction also agrees with the essential principle in our legal system that while a criminal liability carries with it a corresponding civil liability, they are nevertheless separate and distinct. In other words, these two liabilities may co-exist but their existence is not dependent on each other. x x x [T]he extinction of the criminal action does not [necessarily] result in the extinction of the corresponding civil action. The latter may only be extinguished when there is a "finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist." x x x Hence, a civil action filed for the purpose of enforcing civil liability *ex delicto*, even if mandatorily instituted with the corresponding criminal action, survives an acquittal when it is based on the presence of reasonable doubt. In these instances while the evidence presented does not establish the fact of the crime with moral certainty, the civil action still prevails for as long as the greater weight of evidence tilts in favor of a finding of liability.

3. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA UNDER ARTICLE 315; ELEMENTS.— Our laws penalize criminal fraud which causes damage capable of pecuniary estimation through *estafa* under Article 315 of the Revised Penal

Code. In general, the elements of *estafa* are: (1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. The essence of the crime is the unlawful abuse of confidence or deceit in order to cause damage. As this Court previously held, "the element of fraud or bad faith is indispensable." Our law abhors the act of defrauding another person by abusing his trust or deceiving him, such that, it criminalizes this kind of fraud.

4. ID.; ID.; ID.; ESTAFA COMMITTED BY ABUSE OF CONFIDENCE; THE FRAUD CONSIDERED AS CRIMINAL IS THE ACT OF MISAPPROPRIATION OR CONVERSION; WHEN ACCUSED IS ACQUITTED BECAUSE OF REASONABLE DOUBT AS TO THE EXISTENCE OF MISAPPROPRIATION OR CONVERSION, CIVIL LIABILITY MAY STILL BE AWARDED .— Article 315 of the Revised Penal Code identifies the circumstances which constitute *estafa*. Article 315, paragraph 1 (b) states that *estafa* is committed by abuse of confidence – Article 315. *Swindling (estafa).* — x x x (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. In this kind of *estafa*, the fraud which the law considers as criminal is the act of misappropriation or conversion. When the element of misappropriation or conversion is missing, there can be no *estafa*. In such case, applying the foregoing discussions on civil liability *ex delicto*, there can be no civil liability as there is no act or omission from which any civil liability may be sourced. However, when an accused is acquitted because a reasonable doubt exists as to the existence of misappropriation or conversion, then civil liability may still be awarded. This means that, while there is evidence to prove fraud, such evidence does not suffice to convince the court to the point of moral certainty that the act of fraud amounts to *estafa*. As the act was nevertheless proven, albeit without sufficient proof justifying the imposition of any criminal penalty, civil liability exists.

5. ID.; ID.; ID.; CIVIL LIABILITY IN ESTAFA CASES; WHERE THE SOURCE OF OBLIGATION IS A CONTRACT NEGATING ESTAFA, THERE IS NO CIVIL LIABILITY *EX DELICTO*.— Under [the cases of] *Pantig and Singson*, whenever the elements of *estafa* are not established, and that the delivery of any personal property was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case. This is because the civil liability arising from the contract is not civil liability *ex delicto*, which arises from the same act or omission constituting the crime. Civil liability *ex delicto* is the liability sought to be recovered in a civil action deemed instituted with the criminal case. x x x [W]henever the court makes a finding that the elements of *estafa* do not exist, it effectively says that there is no crime. There is no act or omission that constitutes criminal fraud. Civil liability *ex delicto* cannot be awarded as it cannot be sourced from something that does not exist. When the court finds that the source of obligation is in fact, a contract, as in a contract of loan, it takes a position completely inconsistent with the presence of *estafa*. x x x [A]ny finding that the source of obligation is a contract negates *estafa*. The finding, in turn, means that there is no civil liability *ex delicto*.

6. POLITICAL LAW; CONSTITUTION; BILL OF RIGHTS; NO PERSON SHALL BE DEPRIVED OF PROPERTY WITHOUT DUE PROCESS OF LAW; PROCEDURAL DUE PROCESS; WHERE THE INITIATORY PLEADING FAILS TO STATE A CAUSE OF ACTION, MOTION TO DISMISS MAY BE FILED EVEN BEFORE TRIAL.— Section 1 of the Bill of Rights states that no person shall be deprived of property without due process of law. x x x Procedural due process guarantees procedural fairness. It requires an ascertainment of "what process is due, when it is due, and the degree of what is due." This aspect of due process is at the heart of this case. In general terms, procedural due process means the right to notice and hearing. x x x The Rules of Court requires that any person invoking the power of the judiciary to protect or enforce a right or prevent or redress a wrong must file an initiatory pleading which embodies a cause of action, which is defined as the act or omission by which a party violates a right of another. The contents of an initiatory pleading alleging a cause of action will vary depending on the source of the

obligation involved. In the case of an obligation arising from a contract, as in this case, the cause of action in an initiatory pleading will involve the duties of the parties to the contract, and what particular obligation was breached. On the other hand, when the obligation arises from an act or omission constituting a crime, the cause of action must necessarily be different. In such a case, the initiatory pleading will assert as a cause of action the act or omission of respondent, and the specific criminal statute he or she violated. Where the initiatory pleading fails to state a cause of action, the respondent may file a motion to dismiss even before trial. These rules embody the fundamental right to notice under the Due Process Clause of the Constitution.

APPEARANCES OF COUNSEL

Rogelio P. Nogales for petitioner.

D E C I S I O N

JARDELEZA, *J.*:

Our law states that every person criminally liable for a felony is also civilly liable. This civil liability *ex delicto* may be recovered through a civil action which, under our Rules of Court, is deemed instituted with the criminal action. While they are actions mandatorily fused,[1] they are, in truth, separate actions whose existences are not dependent on each other. Thus, civil liability *ex delicto* survives an acquittal in a criminal case for failure to prove guilt beyond reasonable doubt. However, the Rules of Court limits this mandatory fusion to a civil action for the recovery of civil liability *ex delicto.* It, by no means, includes a civil liability arising from a different source of obligation, as in the case of a contract. Where the civil liability is *ex contractu*, the court hearing the criminal case has no authority to award damages.

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[1] Bautista, *The Confusing Fusion of A Civil Claim In a Criminal Proceeding*, 79 Phil. L.J 640 (2004), pp. 361-401.

The Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. Petitioner Gloria S. Dy (petitioner) seeks the reversal of the decision of the Court of Appeals (CA) dated February 25, 2009 (Assailed Decision)[2] ordering her to pay Mandy Commodities Company, Inc. (MCCI) in the amount of ₱21,706.281.00.[3]

The Facts

Petitioner was the former General Manager of MCCI. In the course of her employment, petitioner assisted MCCI in its business involving several properties. One such business pertained to the construction of warehouses over a property (Numancia Property) that MCCI leased from the Philippine National Bank (PNB). Sometime in May 1996, in pursuit of MCCI's business, petitioner proposed to William Mandy (Mandy), President of MCCI, the purchase of a property owned by Pantranco. As the transaction involved a large amount of money, Mandy agreed to obtain a loan from the International China Bank of Commerce (ICBC). Petitioner represented that she could facilitate the approval of the loan. True enough, ICBC granted a loan to MCCI in the amount of ₱20,000,000.00, evidenced by a promissory note. As security, MCCI also executed a chattel mortgage over the warehouses in the Numancia Property. Mandy entrusted petitioner with the obligation to manage the payment of the loan.[4]

In February 1999, MCCI received a notice of foreclosure over the mortgaged property due to its default in paying the loan obligation.[5] In order to prevent the foreclosure, Mandy instructed petitioner to facilitate the payment of the loan. MCCI,

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[2] Penned by Arcangelita M. Romilla-Lontok and concurred in by Associate Justices Josefina Guevara-Salonga and Romeo F. Barza, *rollo*, pp. 39-48.

[3] *Id.* at 41, 48.

[4] Records, pp. 407-409.

[5] *Id.* at 409.

through Mandy, issued 13 Allied Bank checks and 12 AsiaTrust Bank checks in varying amounts and in different dates covering the period from May 18, 1999 to April 4, 2000.[6] The total amount of the checks, which were all payable to cash, was ₱21,706,281.00. Mandy delivered the checks to petitioner. Mandy claims that he delivered the checks with the instruction that petitioner use the checks to pay the loan.[7] Petitioner, on the other hand, testified that she encashed the checks and returned the money to Mandy.[8] ICBC eventually foreclosed the mortgaged property as MCCI continued to default in its obligation to pay. Mandy claims that it was only at this point in time that he discovered that not a check was paid to ICBC.[9]

Thus, on October 7, 2002, MCCI, represented by Mandy, filed a Complaint-Affidavit for *Estafa*[10] before the Office of the City Prosecutor of Manila. On March 3, 2004, an Information[11] was filed against petitioner before the Regional Trial Court (RTC) Manila.

After a full-blown trial, the RTC Manila rendered a decision[12] dated November 11, 2005 (RTC Decision) acquitting petitioner. The RTC Manila found that while petitioner admitted that she received the checks, the prosecution failed to establish that she was under any obligation to deliver them to ICBC in payment of MCCI's loan. The trial court made this finding on the strength of Mandy's admission that he gave the checks to petitioner with the agreement that she would encash them. Petitioner would then pay ICBC using her own checks. The trial court further made a finding that Mandy and petitioner entered into a contract

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[6] *Id.* at 452-476.

[7] TSN, July 12, 2004, p. 44.

[8] TSN, May 4, 2005, p. 32.

[9] Records, pp. 409-410.

[10] *Id.* at 13-23.

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

[12] *Id*. at 406-417.

of loan.[13] Thus, it held that the prosecution failed to establish an important element of the crime of *estafa*—misappropriation or conversion. However, while the RTC Manila acquitted petitioner, it ordered her to pay the amount of the checks. The dispositive portion of the RTC Decision states —

> WHEREFORE, the prosecution having failed to establish the guilt of the accused beyond reasonable doubt, judgment is hereby rendered ACQUITTING the accused of the offense charged. With costs de officio.
>
> The accused is however civilly liable to the complainant for the amount of ₱21,706,281.00.
>
> SO ORDERED.[14]

Petitioner filed an appeal[15] of the civil aspect of the RTC Decision with the CA. In the Assailed Decision,[16] the CA found the appeal without merit. It held that the acquittal of petitioner does not necessarily absolve her of civil liability. The CA said that it is settled that when an accused is acquitted on the basis of reasonable doubt, courts may still find him or her civilly liable if the evidence so warrant. The CA explained that the evidence on record adequately prove that petitioner received the checks as a loan from MCCI. Thus, preventing the latter from recovering the amount of the checks would constitute unjust enrichment. Hence, the Assailed Decision ruled —

> WHEREFORE, in view of the foregoing, the appeal is DENIED. The Decision dated November 11, 2005 of the Regional Trial Court, Manila, Branch 33 in Criminal Case No. 04-224294 which found Gloria Dy civilly liable to William Mandy is AFFIRMED.
>
> **SO ORDERED**.[17]

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[13] *Id.* at 415-416.

[14] *Id.* at 417.

[15] *Rollo*, pp. 68-259.

[16] *Supra* note 2.

[17] *Rollo*, p. 48, emphasis in the original.

The CA also denied petitioner's motion for reconsideration in a resolution[18] dated August 3, 2009.

Hence, this Petition for Review on *Certiorari* (Petition). Petitioner argues that since she was acquitted for failure of the prosecution to prove all the elements of the crime charged, there was therefore no crime committed.[19] As there was no crime, any civil liability *ex delicto* cannot be awarded.

The Issues

The central issue is the propriety of making a finding of civil liability in a criminal case for *estafa* when the accused is acquitted for failure of the prosecution to prove all the elements of the crime charged.

The Ruling of the Court

We grant the petition.

Civil Liability Arising From Crime

Our laws recognize a bright line distinction between criminal and civil liabilities. A crime is a liability against the state. It is prosecuted by and for the state. Acts considered criminal are penalized by law as a means to protect the society from dangerous transgressions. As criminal liability involves a penalty affecting a person's liberty, acts are only treated criminal when the law clearly says so. On the other hand, civil liabilities take a less public and more private nature. Civil liabilities are claimed through civil actions as a means to enforce or protect a right or prevent or redress a wrong.[20] They do not carry with them the imposition of imprisonment as a penalty. Instead, civil liabilities are compensated in the form of damages.

Nevertheless, our jurisdiction recognizes that a crime has a private civil component. Thus, while an act considered criminal

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[18] *Id.* at 67.

[19] *Id.* at 21-27.

[20] RULES OF COURT, Rule 1, Sec. 3, par. (a).

is a breach of law against the State, our legal system allows for the recovery of civil damages where there is a private person injured by a criminal act. It is in recognition of this dual nature of a criminal act that our Revised Penal Code provides that every person criminally liable is also civilly liable.[21] This is the concept of civil liability *ex delicto*.

This is echoed by the New Civil Code when it recognizes acts or omissions punished by law as a separate source of obligation.[22] This is reinforced by Article 30 of the same code which refers to the filing of a separate civil action to demand civil liability arising from a criminal offense.[23]

The Revised Penal Code fleshes out this civil liability in Article 104[24] which states that it includes restitution, reparation of damage caused and indemnification for consequential damages.

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[21] REVISED PENAL CODE, Art. 100.

[22] CIVIL CODE, Art. 1157. Obligations arise from:

1. Law;
2. Contracts;
3. Quasi-contracts;
4. Acts or omissions punished by law; and
5. Quasi-delicts.

[23] CIVIL CODE, Art. 30. When a separate civil action is brought to demand civil liability arising from a criminal offense, and no criminal proceedings are instituted during the pendency of the civil case, a preponderance of evidence shall likewise be sufficient to prove the act complained of.

[24] REVISED PENAL CODE, Art. 104. *What is included in civil liability.*— The civil liability established in Articles 100, 101, 102 and 103 of this Code includes:

1. Restitution;
2. Reparation of the damage caused;
3. Indemnification for consequential damages.

Rules of procedure for criminal and civil actions involving the same act or omission

The law and the rules of procedure provide for a precise mechanism in instituting a civil action pertaining to an act or omission which is also subject of a criminal case. Our Rules of Court prescribes a kind of fusion such that, subject to certain defined qualifications, when a criminal action is instituted, the civil action for the recovery of the civil liability arising from the offense is deemed instituted as well.[25]

However, there is an important difference between civil and criminal proceedings that require a fine distinction as to how these twin actions shall proceed. These two proceedings involve two different standards of proof. A criminal action requires proof of guilt beyond reasonable doubt while a civil action requires a lesser quantum of proof, that of preponderance of evidence. This distinction also agrees with the essential principle in our legal system that while a criminal liability carries with it a corresponding civil liability, they are nevertheless separate and distinct. In other words, these two liabilities may co-exist but their existence is not dependent on each other.[26]

The Civil Code states that when an accused in a criminal prosecution is acquitted on the ground that his guilt has not been proven beyond reasonable doubt, a civil action for damages for the same act or omission may be filed. In the latter case, only preponderance of evidence is required.[27] This is supported

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[25] RULES OF COURT, Rule 111, Sec. 1, par. (a). See also footnote 1.

[26] *Supra* note 1.

[27] CIVIL CODE, Art. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that

by the Rules of Court which provides that the extinction of the criminal action does not result in the extinction of the corresponding civil action.[28] The latter may only be extinguished when there is a "finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist."[29] Consistent with this, the Rules of Court requires that in judgments of acquittal, the court must state whether "the evidence of the prosecution absolutely failed to prove the guilt of the accused or merely failed to prove his guilt beyond reasonable doubt. In either case, the judgment shall determine if the act or omission from which the civil liability might arise did not exist."[30]

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effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground.

[28] RULES OF COURT, Rule 111, Sec. 2. *When separate civil action is suspended.*—After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

If the criminal action is filed after the said civil action has already been instituted, the latter shall be suspended in whatever stage it may be found before judgment on the merits. The suspension shall last until final judgment is rendered in the criminal action. Nevertheless, before judgment on the merits is rendered in the civil action, the same may, upon motion of the offended party, be consolidated with the criminal action in the court trying the criminal action. In case of consolidation, the evidence already adduced in the civil action shall be deemed automatically reproduced in the criminal action without prejudice to the right of the prosecution to cross-examine the witnesses presented by the offended party in the criminal case and of the parties to present additional evidence. The consolidated criminal and civil actions shall be tried and decided jointly.

During the pendency of the criminal action, the running of the period of prescription of the civil action which cannot be instituted separately or whose proceeding has been suspended shall be tolled.

The extinction of the penal action does not carry with it extinction of the civil action. However, the civil action based on delict may be deemed extinguished if there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist.

[29] *Id.*

[30] RULES OF COURT, Rule 120, Sec. 2.

Thus, whether an exoneration from the criminal action should affect the corresponding civil action depends on the varying kinds of acquittal. In *Manantan v. Court of Appeals,*[31] we explained —

> Our law recognizes two kinds of acquittal, with different effects on the civil liability of the accused. First is an acquittal on the ground that the accused is not the author of the act or omission complained of. This instance closes the door to civil liability, for a person who has been found to be not the perpetrator of any act or omission cannot and can never be held liable for such act or omission. There being no *delict*, civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of. This is the situation contemplated in Rule 111 of the Rules of Court. The second instance is an acquittal based on reasonable doubt on the guilt of the accused. In this case, even if the guilt of the accused has not been satisfactorily established, he is not exempt from civil liability which may be proved by preponderance of evidence only. This is the situation contemplated in Article 29 of the Civil Code, where the civil action for damages is "for the same act or omission." Although the two actions have different purposes, the matters discussed in the civil case are similar to those discussed in the criminal case. However, the judgment in the criminal proceeding cannot be read in evidence in the civil action to establish any fact there determined, even though both actions involve the same act or omission. The reason for this rule is that the parties are not the same and secondarily, different rules of evidence are applicable. Hence, notwithstanding herein petitioner's acquittal, the Court of Appeals in determining whether Article 29 applied, was not precluded from looking into the question of petitioner's negligence or reckless imprudence.[32]

In *Dayap v. Sendiong*,[33] we further said —

> The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction

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[31] G.R. No. 107125, January 29, 2001, 350 SCRA 387.

[32] *Id.* at 397-398.

[33] G.R. No. 177960, January 29, 2009, 577 SCRA 134.

of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him.[34]

Hence, a civil action filed for the purpose of enforcing civil liability *ex delicto*, even if mandatorily instituted with the corresponding criminal action, survives an acquittal when it is based on the presence of reasonable doubt. In these instances, while the evidence presented does not establish the fact of the crime with moral certainty, the civil action still prevails for as long as the greater weight of evidence tilts in favor of a finding of liability. This means that while the mind of the court cannot rest easy in penalizing the accused for the commission of a crime, it nevertheless finds that he or she committed or omitted to perform acts which serve as a separate source of obligation. There is no sufficient proof that the act or omission is criminal beyond reasonable doubt, but there is a preponderance of evidence to show that the act or omission caused injury which demands compensation.

Civil Liability Ex Delicto in Estafa Cases

Our laws penalize criminal fraud which causes damage capable of pecuniary estimation through *estafa* under Article 315 of the Revised Penal Code. In general, the elements of *estafa* are:

(1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and

(2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

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[34] *Id.* at 148.

The essence of the crime is the unlawful abuse of confidence or deceit in order to cause damage. As this Court previously held, "the element of fraud or bad faith is indispensable."[35] Our law abhors the act of defrauding another person by abusing his trust or deceiving him, such that, it criminalizes this kind of fraud.

Article 315 of the Revised Penal Code identifies the circumstances which constitute *estafa*. Article 315, paragraph 1 (b) states that *estafa* is committed by abuse of confidence —

> Art. 315. *Swindling (estafa).*– x x x (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

In this kind of *estafa*, the fraud which the law considers as criminal is the act of misappropriation or conversion. When the element of misappropriation or conversion is missing, there can be no *estafa*. In such case, applying the foregoing discussions on civil liability *ex delicto*, there can be no civil liability as there is no act or omission from which any civil liability may be sourced. However, when an accused is acquitted because a reasonable doubt exists as to the existence of misappropriation or conversion, then civil liability may still be awarded. This means that, while there is evidence to prove fraud, such evidence does not suffice to convince the court to the point of moral certainty that the act of fraud amounts to *estafa*. As the act was nevertheless proven, albeit without sufficient proof justifying the imposition of any criminal penalty, civil liability exists.

In this case, the RTC Manila acquitted petitioner because the prosecution failed to establish by sufficient evidence the element of misappropriation or conversion. There was no

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[35] *People v. Singson*, G.R. No. 75920, November 12, 1992, 215 SCRA 534, 538.

adequate evidence to prove that Mandy gave the checks to petitioner with the instruction that she will use them to pay the ICBC loan. Citing Mandy's own testimony in open court, the RTC Manila held that when Mandy delivered the checks to petitioner, their agreement was that it was a "sort of loan."[36] In the dispositive portion of the RTC Decision, the RTC Manila ruled that the prosecution "failed to establish the guilt of the accused beyond reasonable doubt."[37] It then proceeded to order petitioner to pay the amount of the loan.

The ruling of the RTC Manila was affirmed by the CA. It said that "[t]he acquittal of Gloria Dy is anchored on the ground that her guilt was not proved beyond reasonable doubt - not because she is not the author of the act or omission complained of. x x x The trial court found no trickery nor deceit in obtaining money from the private complainant; instead, it concluded that the money obtained was undoubtedly a loan."[38]

Our jurisprudence on this matter diverges.

Earlier cases ordered the dismissal of the civil action for recovery of civil liability *ex delicto* whenever there is a finding that there was no *estafa* but rather an obligation to pay under a contract. In *People v. Pantig*,[39] this Court affirmed the ruling of the lower court acquitting Pantig, but revoked the portion sentencing him to pay the offended party the amount of money alleged to have been obtained through false and fraudulent representations, thus —

> The trial court found as a fact that the sum of ₱1,200, ordered to be paid in the judgment of acquittal, was received by the defendant-appellant as loan. This finding is inconsistent with the existence of the criminal act charged in the information. **The liability of the defendant for the return of the amount so received arises from**

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[36] Records, pp. 415-416.

[37] *Id.* at 417.

[38] *Rollo*, p. 45.

[39] 97 Phil. 748 (1955).

a civil contract, not from a criminal act, and may not be enforced in the criminal case.

The portion of the judgment appealed from, which orders the defendant-appellant to pay the sum of ₱1,200 to the offended party, is hereby revoked, without prejudice to the filing of a civil action for the recovery of the said amount.[40]

This was also the import of the ruling in *People v. Singson*.[41] In that case, this Court found that "the evidence [was] not sufficient to establish the existence of fraud or deceit on the part of the accused. x x x And when there is no proven deceit or fraud, there is no crime of *estafa.*"[42] While we also said that the established facts may prove Singson's civil liability (obligation to pay under a contract of sale), we nevertheless made no finding of civil liability because "our mind cannot rest easy on the certainty of guilt"[43] considering the above finding. The dispositive portion stated that Singson is acquitted "without prejudice to any civil liability which may be established in a civil case against her."[44]

However, our jurisprudence on the matter appears to have changed in later years.

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[40] *Id.* at 750, emphasis supplied.

[41] G.R. No. 75920, November 12, 1992, 215 SCRA 534.

[42] *Id.* at 538-539.

[43] *Id.* at 539.

[44] *Id.*; See also *United States v. Ador Dionisio,* 35 Phil. 141, 143-144 (1916). In this case, while this Court convicted the accused for *estafa*, it refused to order him to pay the civil liabilities claimed by private complainant, explaining that —

> But the amount of the hire cannot be recovered by way of civil damages in these proceedings. The amount due under the rental contract may properly be recovered in a separate civil action; but it cannot be held to be included in the civil damages (*perjuicios*) arising out of the crime of *estafa* of which the accused is convicted in this criminal action. (Art. 119, Penal Code.)
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> x x x x x x x x x

In *Eusebio-Calderon v. People*,[45] this Court affirmed the finding of the CA that Calderon "did not employ trickery or deceit in obtaining money from the private complainants, instead, it concluded that the money obtained was undoubtedly loans for which [Calderon] paid interest."[46] Thus, this Court upheld Calderon's acquittal of *estafa*, but found her civilly liable for the principal amount borrowed from the private complainants.[47]

The ruling was similar in *People v. Cuyugan*.[48] In that case, we acquitted Cuyugan of *estafa* for failure of the prosecution to prove fraud. We held that the transaction between Cuyugan and private complainants was a loan to be used by Cuyugan in her business. Thus, this Court ruled that Cuyugan has the obligation, which is civil in character, to pay the amount borrowed.[49]

We hold that the better rule in ascertaining civil liability in *estafa* cases is that pronounced in *Pantig* and *Singson*. The rulings in these cases are more in accord with the relevant provisions of the Civil Code, and the Rules of Court. They are also logically consistent with this Court's pronouncement in *Manantan.*

Under *Pantig* and *Singson,* whenever the elements of *estafa* are not established, and that the delivery of any personal property

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x x x **The indebtedness under the rental contract was and is a thing wholly apart from and independent of the crime of *estafa* committed by the accused.** No direct causal relation can be traced between them, and in the absence of such a relation, a judgment for the amount of the indebtedness, with subsidiary imprisonment in case of insolvency and failure to pay the amount of the judgment, cannot properly be included in a judgment in the criminal action for the civil damages (*perjuicios*) arising from or consequent upon the commission of the crime of which the accused is convicted. (Emphasis supplied.)

[45] G.R. No. 158495, October 21, 2004, 441 SCRA 137.

[46] *Id.* at 147.

[47] *Id.* at 149, with modification on the amount of the civil liability.

[48] G.R. Nos. 146641-43, November 18, 2002, 392 SCRA 140.

[49] *Id.* at 151.

was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case. This is because the civil liability arising from the contract is not civil liability *ex delicto*, which arises from the same act or omission constituting the crime. Civil liability *ex delicto* is the liability sought to be recovered in a civil action deemed instituted with the criminal case.

The situation envisioned in the foregoing cases, as in this case, is civil liability *ex contractu* where the civil liability arises from an entirely different source of obligation. Therefore, it is not the type of civil action deemed instituted in the criminal case, and consequently must be filed separately. This is necessarily so because whenever the court makes a finding that the elements of *estafa* do not exist, it effectively says that there is no crime. There is no act or omission that constitutes criminal fraud. Civil liability *ex delicto* cannot be awarded as it cannot be sourced from something that does not exist.

When the court finds that the source of obligation is in fact, a contract, as in a contract of loan, it takes a position completely inconsistent with the presence of *estafa*. In *estafa*, a person parts with his money because of abuse of confidence or deceit. In a contract, a person willingly binds himself or herself to give something or to render some service.[50] In *estafa*, the accused's failure to account for the property received amounts to criminal fraud. In a contract, a party's failure to comply with his obligation is only a contractual breach. Thus, any finding that the source of obligation is a contract negates *estafa*. The finding, in turn, means that there is no civil liability *ex delicto*. Thus, the rulings in the foregoing cases are consistent with the concept of fused civil and criminal actions, and the different sources of obligations under our laws.

We apply this doctrine to the facts of this case. Petitioner was acquitted by the RTC Manila because of the absence of the element of misappropriation or conversion. The RTC Manila,

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[50] CIVIL CODE, Art. 1305.

as affirmed by the CA, found that Mandy delivered the checks to petitioner pursuant to a loan agreement. Clearly, there is no crime of *estafa*. There is no proof of the presence of any act or omission constituting criminal fraud. Thus, civil liability *ex delicto* cannot be awarded because there is no act or omission punished by law which can serve as the source of obligation. Any civil liability arising from the loan takes the nature of a civil liability *ex contractu*. It does not pertain to the civil action deemed instituted with the criminal case.

In *Manantan*, this Court explained the effects of this result on the civil liability deemed instituted with the criminal case. At the risk of repetition, *Manantan* held that when there is no delict, "civil liability *ex delicto* is out of the question, and the civil action, if any, which may be instituted must be based on grounds other than the *delict* complained of."[51] In Dy's case, the civil liability arises out of contract—a different source of obligation apart from an act or omission punished by law—and must be claimed in a separate civil action.

Violation of Due Process

We further note that the evidence on record never fully established the terms of this loan contract. As the trial before the RTC Manila was focused on proving *estafa*, the loan contract was, as a consequence, only tangentially considered. This provides another compelling reason why the civil liability arising from the loan should be instituted in a separate civil case. A civil action for collection of sum of money filed before the proper court will provide for a better venue where the terms of the loan and other relevant details may be received. While this may postpone a warranted recovery of the civil liability, this Court deems it more important to uphold the principles underlying the inherent differences in the various sources of obligations under our law, and the rule that fused actions only refer to criminal and civil actions involving the same act or omission. These legal tenets play a central role in this legal system. A

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[51] *Supra* note 31 at 397.

confusion of these principles will ultimately jeopardize the interests of the parties involved. Actions focused on proving *estafa* is not the proper vehicle to thresh out civil liability arising from a contract.[52] The Due Process Clause of the Constitution dictates that a civil liability arising from a contract must be litigated in a separate civil action.

Section 1 of the Bill of Rights states that no person shall be deprived of property without due process of law. This provision protects a person's right to both substantive and procedural due process. Substantive due process looks into the validity of a law and protects against arbitrariness.[53] Procedural due process, on the other hand, guarantees procedural fairness.[54] It requires an ascertainment of "what process is due, when it is due, and the degree of what is due."[55] This aspect of due process is at the heart of this case.

In general terms, procedural due process means the right to notice and hearing.[56] More specifically, our Rules of Court provides for a set of procedures through which a person may be notified of the claims against him or her as well as methods through which he or she may be given the adequate opportunity to be heard.

The Rules of Court requires that any person invoking the power of the judiciary to protect or enforce a right or prevent or redress a wrong[57] must file an initiatory pleading which embodies a cause of action,[58] which is defined as the act or

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[52] See the dissenting opinion of Justice Johns in *Wise & Co. v. Larion*, 45 Phil. 314 (1923).

[53] *Gamboa v. Teves*, G.R. No. 176579, June 28, 2011, 652 SCRA 690.

[54] *Id.*

[55] *Secretary of Justice v. Lantion*, G.R. No. 139465, October 17, 2000, 343 SCRA 377, 392.

[56] *Secretary of Justice v. Lantion*, G.R. No. 139465, January18, 2000, 322 SCRA 160.

[57] RULES OF COURT, Rule 1, Sec. 3, par. (a).

[58] RULES OF COURT, Rule 1, Sec. 5; Rule 2, Sec. 1.

omission by which a party violates a right of another.[59] The contents of an initiatory pleading alleging a cause of action will vary depending on the source of the obligation involved. In the case of an obligation arising from a contract, as in this case, the cause of action in an initiatory pleading will involve the duties of the parties to the contract, and what particular obligation was breached. On the other hand, when the obligation arises from an act or omission constituting a crime, the cause of action must necessarily be different. In such a case, the initiatory pleading will assert as a cause of action the act or omission of respondent, and the specific criminal statute he or she violated. Where the initiatory pleading fails to state a cause of action, the respondent may file a motion to dismiss even before trial.[60] These rules embody the fundamental right to notice under the Due Process Clause of the Constitution.

In a situation where a court (in a fused action for the enforcement of criminal and civil liability) may validly order an accused-respondent to pay an obligation arising from a contract, a person's right to be notified of the complaint, and the right to have the complaint dismissed if there is no cause of action, are completely defeated. In this event, the accused-respondent is completely unaware of the nature of the liability claimed against him or her at the onset of the case. The accused-respondent will not have read any complaint stating the cause of action of an obligation arising from a contract. All throughout the trial, the accused-respondent is made to believe that should there be any civil liability awarded against him or her, this liability is rooted from the act or omission constituting the crime. The accused-respondent is also deprived of the remedy of having the complaint dismissed through a motion to dismiss before trial. In a fused action, the accused-respondent could not have availed of this remedy because he or she was not even given an opportunity to ascertain what cause of action to look for in the initiatory pleading. In such a case, the accused-respondent

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[59] RULES OF COURT, Rule 2, Sec. 1.

[60] RULES OF COURT, Rule 16, Sec. 1, par. (g).

is blindsided. He or she could not even have prepared the appropriate defenses and evidence to protect his or her interest. This is not the concept of fair play embodied in the Due Process Clause. It is a clear violation of a person's right to due process.

The Rules of Court also allows a party to a civil action certain remedies that enable him or her to effectively present his or her case. A party may file a cross-claim, a counterclaim or a third-party complaint.[61] The Rules of Court prohibits these remedies in a fused civil and criminal case.[62] The Rules of Court requires that any cross-claim, counterclaim or third-party complaint must be instituted in a separate civil action.[63] In a legal regime where a court may order an accused in a fused action to pay civil liability arising from a contract, the accused-respondent is completely deprived of the remedy to file a cross-claim, a counterclaim or a third-party complaint. This—coupled with an accused-respondent's inability to adequately prepare his or her defense because of lack of adequate notice of the claims against him or her—prevents the accused-respondent from having any right to a meaningful hearing. The right to be heard under the Due Process Clause requires not just any kind of an opportunity to be heard. It mandates that a party to a case must have the chance to be heard in a real and meaningful sense. It does not require a perfunctory hearing, but a court proceeding where the party may adequately avail of the procedural remedies granted to him or her. A court decision resulting from this falls short of the mandate of the Due Process Clause.

Indeed, the language of the Constitution is clear. No person shall be deprived of property without due process of law. Due Process, in its procedural sense, requires, in essence, the right to notice and hearing. These rights are further fleshed out in the Rules of Court. The Rules of Court enforces procedural due process because, to repeat the words of this Court in *Secretary*

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[61] RULES OF COURT, Rule 6, Secs. 8, 9 & 11.

[62] RULES OF COURT, Rule 111, Sec. 1, par. (a).

[63] *Id.*

of Justice v. Lantion, it provides for "what process is due, when it is due, and the degree of what is due."[64] A court ordering an accused in a fused action to pay his or her contractual liability deprives him or her of his or her property without the right to notice and hearing as expressed in the procedures and remedies under the Rules of Court. Thus, any court ruling directing an accused in a fused action to pay civil liability arising from a contract is one that completely disregards the Due Process Clause. This ruling must be reversed and the Constitution upheld.

Conclusion

The lower courts erred when they ordered petitioner to pay her civil obligation arising from a contract of loan in the same criminal case where she was acquitted on the ground that there was no crime. Any contractual obligation she may have must be litigated in a separate civil action involving the contract of loan. We clarify that in cases where the accused is acquitted on the ground that there is no crime, the civil action deemed instituted with the criminal case cannot prosper precisely because there is no delict from which any civil obligation may be sourced. The peculiarity of this case is the finding that petitioner, in fact, has an obligation arising from a contract. This civil action arising from the contract is not necessarily extinguished. It can be instituted in the proper court through the proper civil action.

We note that while there is no written contract of loan in this case, there is an oral contract of loan which must be brought within six years.[65] Under the facts of the case, it appears that any breach in the obligation to pay the loan may have happened between 1996 and 1999, or more than six years since this case has been instituted. This notwithstanding, we find that the civil action arising from the contract of loan has not yet prescribed. Article 1150 of the Civil Code states —

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[64] *Supra* note 55.

[65] CIVIL CODE, Art. 1145. The following actions must be commenced within six years:

1. Upon an oral contract;

x x x x x x x x x

Art. 1150. The time for prescription for all kinds of actions, when there is no special provision which ordains otherwise, shall be counted from the day they may be brought.

We held in numerous cases that it is the legal possibility of bringing the action that determines the starting point for the computation of the period of prescription.[66] We highlight the unique circumstances surrounding this case. As discussed in this decision, there has been diverse jurisprudence as to the propriety of ordering an accused to pay an obligation arising from a contract in the criminal case where the accused was acquitted on the ground that there is no crime. Litigants, such as MCCI, cannot be blamed for relying on prior rulings where the recovery on a contract of loan in a criminal case for *estafa* was allowed. We have found the opportunity to clarify this matter through this decision. As it is only now that we delineate the rules governing the fusion of criminal and civil actions pertaining to *estafa*, it is only upon the promulgation of this judgment that litigants have a clear understanding of the proper recourse in similar cases. We therefore rule that insofar as MCCI is concerned, the filing of an action, if any (that may be sourced from the contract of loan), becomes a legal possibility only upon the finality of this decision which definitively ruled upon the principles on fused actions.

We add, however, that upon finality of this decision, prospective litigants should become more circumspect in ascertaining their course of action in similar cases. Whenever a litigant erroneously pursues an *estafa* case, and the accused is subsequently acquitted because the obligation arose out of a contract, the prescriptive period will still be counted from the time the cause of action arose. In this eventuality, it is probable that the action has already prescribed by the time the criminal case shall have been completed. This possibility demands that prospective litigants do not haphazardly pursue the filing of

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[66] *Espanol v. Chairman, Philippine Veterans Administration*, G.R. No. L-44616, June 29, 1985, 137 SCRA 314; *Tolentino v. Court of Appeals,* G.R. No. L-41427, June 10, 1988, 162 SCRA 66; Khe Hong *Cheng v. Court of Appeals,* G.R. No. 144169, March 28, 2001, 355 SCRA 701.

an *estafa* case in order to force an obligor to pay his or her obligation with the threat of criminal conviction. It compels litigants to be honest and fair in their judgment as to the proper action to be filed. This ruling should deter litigants from turning to criminal courts as their collection agents, and should provide a disincentive to the practice of filing of criminal cases based on unfounded grounds in order to provide a litigant a bargaining chip in enforcing contracts.

WHEREFORE, in view of the foregoing, the Petition is **GRANTED**. The Decision of the CA dated February 25, 2009 is **REVERSED**. This is however, without prejudice to any civil action which may be filed to claim civil liability arising from the contract.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 190143. August 10, 2016]

SPOUSES LOLITA ORENCIA AND PEDRO D. ORENCIA, *petitioners, vs.* **FELISA CRUZ VDA. DE RANIN, Represented by her Attorney-in-fact, MRS. ESTELA C. TANCHOCO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS; CONFLICTING FINDINGS OF THE TRIAL COURT AND

THE APPELLATE COURT.— In a petition for review under Rule 45 of the Rules of Court, the jurisdiction of the Court in cases brought before it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court. However, the conflicting findings of fact and rulings of the MTC and the RTC on one hand, and the CA on the other, compel this Court to revisit the records of this case.

2. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ELUCIDATED.—** Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. "The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim or ownership by any of the parties. When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession."

3. **CIVIL LAW; LAND TITLES; THE HOLDER OF A TORRENS TITLE IS THE RIGHFUL OWNER OF THE PROPERTY ENTITLED TO ITS POSSESSION.—** "There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession." At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession. x x x The Court has repeatedly emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer.

APPEARANCES OF COUNSEL

Gerado A. Del Mundo Law Office for petitioners.
Epifanio C. Buen for respondent.

D E C I S I O N

REYES, *J.*:

Assailed in this petition for review on *certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated August 27, 2009 and Resolution[3] dated November 6, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106081, which reversed and set aside the Decision[4] dated July 10, 2008 of the Regional Trial Court (RTC) of Antipolo City, Branch 73, in Civil Case No. 08-749 and the Judgment[5] dated November 16, 2007 of the Municipal Trial Court (MTC) of Taytay, Rizal, in Civil Case No. 1904.

The Facts

This petition stemmed from a Complaint[6] for Unlawful Detainer with Damages over Door No. 4 (formerly known as Apartment C) of No. 2 Tanchoco Avenue, El Monteverde Subdivision, Taytay, Rizal, filed by Feliza Cruz Vda. De Ranin (respondent), represented by her sister, Mrs. Estela C. Tanchoco, against Spouses Lolita Orencia (Lolita) and Pedro Orencia (petitioners).

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[1] *Rollo*, pp. 3-22.

[2] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose C. Mendoza (now a Member of this Court) and Jane Aurora C. Lantion concurring; *id*. at 24-32.

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

[4] Rendered by Judge Ronaldo B. Martin; *id*. at 36-38.

[5] Rendered by Judge Wilfredo V. Timola; *id*. at 39-41.

[6] *Id*. at 76-79.

The records showed that the petitioners had been occupying Door No. 4 of the seven-door apartment and lot which is registered under the name of the respondent as evidenced by Transfer Certificate of Title (TCT) No. 514491[7] and Tax Declarations (TD) No. TY 004-13393[8] and No. 00-TY-004-5912.[9]

In her complaint, the respondent alleged that the petitioners stopped and failed to pay the monthly rental on the subject property starting April 15, 2005. On April 24, 2006, the respondent, through counsel, sent to the petitioners a formal letter of demand to vacate,[10] which was received by the petitioners' representative in the subject property on May 2, 2006 as certified by the Postmaster of the Philippine Postal Corporation of Taytay, Rizal. The respondent also referred the matter to the barangay for conciliation proceedings. However, despite the demand to vacate and referral to the barangay, the petitioners continuously refused to vacate the subject property. Consequently, since no conciliation was agreed upon, a Certification to File Action[11] was issued.[12]

On August 8, 2006, the respondent filed a complaint for unlawful detainer case against the petitioners. However, despite the summons[13] being served, the petitioners failed to file their answer. Consequently, on September 11, 2006, the respondent filed a Motion for Judgment[14] which was set for hearing on October 6, 2006. On the same date, the petitioners appeared

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[7] *Id*. at 83.

[8] *Id*. at 84-85.

[9] *Id*. at 86-87.

[10] *Id*. at 88.

[11] *Id*. at 89.

[12] *Id*. at 77.

[13] *Id*. at 92.

[14] *Id*. at 90.

and the MTC received a copy of their answer. The petitioners were then ordered to file a comment on the respondent's motion. Thereafter, the MTC denied the respondent's motion and ordered the parties to file their respective position papers.[15]

For her part, Lolita filed her Answer with Counterclaim[16] and alleged that: (1) there was no cause of action; (2) the respondent does not have the authority to institute an action; (3) there was no prior conciliation proceeding between the parties; and (4) there was no prior demand to vacate.[17]

On November 16, 2007, the MTC rendered its Judgment[18] in favor of the petitioners. The MTC dismissed the complaint on the grounds of lack of cause of action and lack of personality to sue by the respondent. The MTC ruled that:

> After a careful study of the evidence of the [respondent], it was established that the property occupied by [Lolita] where she is sought to be ejected by the [respondent] does not belong to [the respondent], but to certain Lea Liza Cruz Ranin, who authorized her to occupy the same; that there was no evidence presented by the [respondent] that Lea Liza de Ranin and [the respondent] refer to one and the same person; that in the absence of proof to that effect the court cannot make a conclusion that [the respondent] and Lea Liza Cruz de Ranin are one and the same person.[19]

Aggrieved, the respondent filed an appeal before the RTC. However, on July 10, 2008, the RTC affirmed the MTC judgment in its entirety.[20] According to the RTC:

> Even if we look into the relevance of [the respondent's] evidence x x x which tend to prove her claim of ownership over the property

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[15] *Id*. at 39.

[16] *Id*. at 93-96.

[17] *Id*. at 94.

[18] *Id*. at 39-41.

[19] *Id*. at 40.

[20] *Id*. at 36-38.

in question, they instead gave her away. While TCT No. 514491 is in the name of [the respondent], [TD] No. TY 004-13393 is in the name of a certain Lea Liza Cruz Ranin. A close scrutiny of the said [TD] shows that it is the only one which has an apartment as improvement. The other [TD] ([TD] No. 00-TY-004-5912, x x x) in the name of [the respondent] indicates no improvement at all. The court *a quo* is quite correct when it found that the property in question does not belong to [the respondent] but to a certain Lea Liza Cruz Ranin. The land might be owned by [the respondent] and the improvement thereon might belong to Lea Liza Cruz Ranin as suggested by the evidence on hand. According to the decision of the court below, it was Lea Liza Cruz Ranin who authorized [Lolita] to occupy the premises in question.[21]

On appeal,[22] the CA, in its Decision[23] dated August 27, 2009, reversed and set aside the MTC and RTC decisions, and ordered the petitioners to vacate the subject property. In overturning the trial courts' rulings, the CA held that the respondent's complaint adequately made out a case of unlawful detainer as the latter pointed out in her complaint that despite the letter of demand and the barangay certification, the petitioners failed and refused to vacate the subject property as well as to pay the monthly rentals. The CA emphasized that the only issue to be resolved in the instant unlawful detainer case is who has the better right of possession over the subject property. According to the CA, the documents adduced by the respondent to support her claim, specifically TCT No. 514491 registered in her name, sufficiently proved that she has a better right of possession over the subject property.

Upset by the foregoing disquisition, the petitioners moved for reconsideration[24] but it was denied by the CA in its

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[21] *Id*. at 37.

[22] *Id*. at 56-64.

[23] *Id*. at 24-32.

[24] *Id*. at 42-44.

Resolution[25] dated November 6, 2009. Hence, the present petition for review on *certiorari.*

The Issue

Whether the respondent has the right of physical possession of the subject property.

Ruling of the Court

The petition is bereft of merit.

To begin with, it is perceptible from the arguments of the petitioners that they are calling for the Court to reassess the evidence presented by the parties. The petitioners are, therefore, raising questions of fact beyond the ambit of the Court's review. In a petition for review under Rule 45 of the Rules of Court, the jurisdiction of the Court in cases brought before it from the CA is limited to the review and revision of errors of law allegedly committed by the appellate court.[26] However, the conflicting findings of fact and rulings of the MTC and the RTC on one hand, and the CA on the other, compel this Court to revisit the records of this case. But even if the Court were to re-evaluate the evidence presented, considering the divergent positions of the courts below, the petition would still fail.

The petitioners' arguments are summarized as follows: (1) the respondent has no cause of action or personality to sue because she is not the owner of the subject property; (2) there were badges of fraud as evidenced by TD No. TY 004-13393 which is in the name of one Lea Liza Cruz Ranin (Lea Liza); (3) they did not personally receive the demand letter which was merely received by a certain Jonalyn Jovellano; (4) the filing of the case is premature as there was no prior conciliation proceedings between the parties before the barangay; and (5) the complaint is a case for quieting of title and/or recovery of possession.[27]

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

[26] *Tong v. Go Tiat Kun*, G.R. No. 196023, April 21, 2014, 722 SCRA 623, 632-633.

[27] *Rollo*, pp. 12-13.

In the main, the crux of the petitioners' argument focuses only on the assumption that just because the respondent is not the owner of the subject property, then she has no right to its possession.

The facts and the issues surrounding this petition are no longer novel since a catena of cases involving the question of who has a better right of physical possession over a property in an unlawful detainer case has already come before the Court.

Unlawful detainer is an action to recover possession of real property from one who unlawfully withholds possession after the expiration or termination of his right to hold possession under any contract, express or implied. "The possession of the defendant in an unlawful detainer case is originally legal but becomes illegal due to the expiration or termination of the right to possess. The sole issue for resolution in an unlawful detainer case is physical or material possession of the property involved, independent of any claim of ownership by any of the parties. When the defendant, however, raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession."[28]

Guided by the foregoing norms, the allegations of the respondent's complaint made out a case of unlawful detainer based on the petitioners' refusal to vacate the subject property which is Door No. 4. The cause of action was to recover possession of the subject property, on account of the petitioners' alleged non-payment of rentals and failure to comply with the respondent's demand to vacate the subject property. Indeed, the possession of the petitioners, although lawful at its commencement, became unlawful upon its non-compliance with the respondent's demand to pay its obligation and to vacate the subject property.

To summarize, the respondent claims that: (1) she is the registered owner of the subject property; (2) the petitioners

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[28] *Go v. Looyuko, et al.*, 713 Phil. 125, 131 (2013).

are renting Door No. 4 of the subject property; (3) the petitioners failed to pay the monthly rental starting April 15, 2005; and (4) a demand letter to vacate the subject property and to pay the rental dues was sent to the petitioners, but the latter refused to do so.

In the instant case, the position of the petitioners is that the respondent cannot oust them from the subject property because the latter is not the owner of the same. They allege that they constructed and built their own house in the land that they occupied in the concept of an owner/possessor.[29] They also claim that it was Lea Liza who authorized them to occupy the subject property.[30]

The respondent, however, rebuts this claim by contending that the subject property is registered under her name and she has been issued a land title under the Torrens system. To support her claim, she submitted TCT No. 514491, TD No. TY 004-13393 and TD No. 00-TY-004-5912.

Without first finding for itself whether there was failure on the part of the petitioners to pay rent which will determine the existence of the cause of action, the MTC and the RTC simply dismissed the case on the grounds of lack of cause of action and lack of legal standing on the part of the respondent. The trial courts also failed to correctly pass upon the issue of ownership in this case to determine the issue of possession. Worse, the trial courts acted on its mistaken notion that the TD should prevail over a Torrens title.

Apparently, the Court has observed that the allegations in the complaint and the answer do not put in issue the existence and validity of the lease contract or their rental agreement. The petitioners never refuted the existence of a lease contract or the fact that they are merely renting the subject property. Likewise, the petitioners never deny their failure to pay rent.

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[29] *Rollo*, p. 10.

[30] *Id*. at 12.

What the petitioners dispute is the respondent's ownership of the subject property.

Undeniably, it is evident from the records of the case that the petitioners are the occupants of the subject property which they do not own. The respondent was able to prove by preponderance of evidence that she is the owner and the rightful possessor of the subject property. The respondent has the right of possession over the subject property being its registered owner under TCT No. 514491. The TCT of the respondent is, therefore, evidence of indefeasible title over the subject property and, as its holder, she is entitled to its possession as a matter of right.

On the other hand, aside from their bare allegation that the respondent is not the owner of the subject property, the petitioners presented nothing to support their claim. They did not submit any piece of evidence showing their right to possess the subject property. Thus, their unsubstantiated arguments are not, by themselves, enough to offset the respondent's right as the registered owner.

"There is no question that the holder of a Torrens title is the rightful owner of the property thereby covered and is entitled to its possession."[31] At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. The titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession.[32]

In this case, the evidence showed that as between the parties, it is the respondent who has a Torrens Title to the subject property. The MTC and the RTC erroneously relied on TD No. TY 004-13393 in the name of Lea Liza to support their finding that the respondent is not the owner of the subject property.

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[31] *Quijano v. Amante*, G.R. No. 164277, October 8, 2014, 737 SCRA 552, 564.

[32] *Manila Electric Co. v. Heirs of Spouses Deloy*, 710 Phil. 427, 443 (2013).

The Court also notes that in assailing the respondent's right over the subject property, the petitioners even branded as fabricated or forged the TCT and TD No. 00-TY-004-5912 presented by the respondent. This argument is obviously equivalent to a collateral attack against the Torrens title of the respondent — an attack that the Court cannot allow in the instant unlawful detainer case.

The Court has repeatedly emphasized that when the property is registered under the Torrens system, the registered owner's title to the property is presumed legal and cannot be collaterally attacked, especially in a mere action for unlawful detainer.[33]

Lastly, the other issues raised by the petitioners, specifically their failure to receive the demand letter and the lack of prior conciliation, proceeding before the barangay, are contradicted by the evidence on record. The certification issued by the Postmaster of Taytay, Rizal that the petitioners have received the said demand letter deserves more weight and consideration than the petitioners' bare denial of not having received the same. Similarly, the petitioners' allegation that there was no prior conciliation proceeding before the barangay is belied by the Certification to File Action[34] issued on December 15, 2005.

In fine, the Court finds no cogent reason to annul the findings and conclusions of the CA. The respondent, as the title holder of the subject property, is the recognized owner of the same and consequently has the better right to its possession.

WHEREFORE, the petition is **DENIED**. The Decision dated August 27, 2009 and Resolution dated November 6, 2009 of the Court of Appeals in CA-G.R. SP No. 106081 are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez*, and *Jardeleza, JJ.*, concur.

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[33] *Spouses Dela Cruz v. Spouses Capco*, 729 Phil. 624, 638 (2014).

[34] *Rollo*, p. 89.

THIRD DIVISION

[G.R. No. 194649. August 10, 2016]

SOLIMAN SECURITY SERVICES, INC. and TERESITA L. SOLIMAN, *petitioners, vs.* **IGMEDIO C. SARMIENTO, JOSE JUN CADA and ERVIN R. ROBIS,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE; PLACING SECURITY GUARDS ON FLOATING STATUS DOES NOT CONSTITUTE DISMISSAL; SPECIFIC PERIOD OF TEMPORARY OFF-DETAIL IS A MAXIMUM OF SIX (6) MONTHS AS PROVIDED UNDER ARTICLE 292 OF THE LABOR CODE.— During that period of time when they are in between assignments or when they are made to wait for new assignments after being relieved from a previous post, guards are considered on temporary "off-detail" or under "floating status." x x x [This]does not constitute dismissal, as the assignments primarily depend on the contracts entered into by the agency with third parties and the same is a valid exercise of management prerogative. However, such practice must be exercised in good faith and courts must be vigilant in assessing the different situations, especially considering that the security guard does not receive any salary or any financial assistance provided by law when placed on floating status. x x x It must be emphasized, however, that they cannot be placed under floating status indefinitely; thus, the Court has applied Article 292 (formerly Article 286) of the Labor Code by analogy to set the specific period of temporary off-detail to a maximum of six (6) months. It must also be clarified that such provision does not entitle agencies to retain security guards on floating status for a period of not more than six (6) months for whatever reason. Placing employees on floating status requires the dire exigency of the employer's *bona fide* suspension of operation. In security services, this happens when there is a surplus of security guards over available assignments as when the clients that do not renew their contracts with the security agency are more than those clients that do.

2. ID.; ID.; ID.; ID.; ID.; LACK OF SERVICE AGREEMENT FOR A CONTINUOUS PERIOD OF 6 MONTHS IS AN AUTHORIZED CAUSE FOR TERMINATION ENTITLING THE SECURITY GUARD TO SEPARATION PAY; FAILURE HEREIN TO REASSIGN OR DISMISS WITH SEPARATION PAY IS CONSIDERED CONSTRUCTIVE DISMISSAL.— It is significant to note that had the reason for such failure to reassign respondents been the lack of service agreements for a continuous period of six (6) months, petitioner agency could have exercised its right to terminate respondents for an authorized cause upon compliance with the procedural requirements. On this score, [Section 9.3 of] Department Order No. 14, Series of 2001(DO 14-01) of the Department of Labor and Employment is instructive. x x x [And] in relation thereto, Section 6.5 of DO 14-01 treats such lack of service assignment for a continuous period of six (6) months as an authorized cause for termination of employment entitling the security guard to separation pay, x x x It bears stressing that the only time a prolonged floating status is considered an authorized cause for dismissal is when the security agency experiences a surplus of security guards brought about by lack of clients. x x x [I]f six (6) months have already lapsed and the employer agency failed to either (a) reassign the security guard or (b) validly dismiss and give him/her the corresponding separation pay, the security guard may be considered to have been constructively dismissed. x x x As for the procedural aspect, employer agencies x x x must comply with the provisions of Article 289 (previously Art. 283) of the Labor Code, "which mandates that a written notice should be served on the employee on temporary off-detail or floating status and to the DOLE one (1) month before the intended date of termination." Sec. 9.2 of DO 14-01 provides for a similar procedure.

3. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 REVIEWING RULE 65 (*CERTIORARI*) RULING OF THE COURT OF APPEALS ON LABOR CASE; LIMITED TO ERRORS OF LAW THAT MIGHT HAVE BEEN COMMITTED IN THE RULE 65 RULING.— The task of resolving the issue on monetary claims, purely factual, properly pertains to the NLRC as the quasi-judicial appellate body to which these documents were presented to review the arbiter's ruling. The appellate court correctly ruled that the usual appeal in labor cases is exhausted after the NLRC has decided. Petitioner

cannot fault the Court of Appeals in affirming the NLRC decision despite the alleged computational error as the special civil action of *certiorari* is a remedy to correct errors of jurisdiction and not mere errors of judgment. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*. The present petition is a Rule 45 petition reviewing a Rule 65 ruling of the Court of Appeals. This Court's jurisdiction is thus limited to errors of law which the appellate court might have committed in its Rule 65 ruling. In essence, in ruling for legal correctness, "we have to view the CA's decision in the same context that the *petition for certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case, was correct." After a meticulous review of the facts of the case, the records, relevant laws and jurisprudence, we rule that the Court of Appeals correctly determined that the NLRC did not abuse its discretion when it held that respondents were constructively dismissed and entitled to their monetary claims.

APPEARANCES OF COUNSEL

Ernesto N. Dinopol, Jr., for petitioners.
Joselito Rance for respondents.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated 27 August 2010 and the Resolution[3] dated 25 November 2010 of the Court

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[1] *Rollo*, pp. 10-24; Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Mario L. Guariña III and Rodil C. Zalameda concurring.

[2] *Id*. at 30-39.

[3] *Id*. at 41.

of Appeals in CA-G.R. SP No. 110905, which affirmed the 2 June 2009 Decision[4] of the National Labor Relations Commission (NLRC) declaring respondents Igmedio C. Sarmiento (Sarmiento), Jose Jun Cada (Cada), and Ervin R. Robis (Robis) to have been illegally dismissed from employment.

The Antecedent Facts

This case stemmed from a complaint filed by respondents against petitioners Soliman Security Services, Inc. (the agency) and Teresita L. Soliman (Teresita) for illegal dismissal; underpayment of salaries, overtime pay and premium pay for holiday and rest day; damages; attorney's fees; illegal deduction and non-payment of ECOLA.

Respondents were hired as security guards by petitioner Soliman Security Services, Inc. and were assigned to Interphil Laboratories, working seven (7) days a week for twelve (12) straight hours daily. Respondents alleged that during their employment – from May 1997 until January 2007 for Robis and from May 2003 until January 2007 for Sarmiento and Cada – they were paid only ₱275.00 a day for eight (8) hours of work or ₱325.00 for twelve (12) hours of work but were not paid ECOLA, night shift differentials, holiday pay, as well as rest day premiums. For cash bond and mutual aid contributions, the amounts of ₱400.00 and ₱100.00, respectively, were deducted from their salaries per month. Respondents claimed that they sought a discussion of the nonpayment of their benefits with petitioner Teresita Soliman but the latter refused to take heed and told them to tender their resignations instead. According to respondents, on 21 January 2007, they received an order relieving them from their posts and since then, they were not given any assignments.

On the other hand, the agency's version of the story hinges on an alleged placement of the respondents under a "floating status." The agency admitted relieving the respondents from

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[4] *Id*. at 63-70.

duty on 20 January 2007 but insists that the same was only done pursuant to its contract with client Interphil Laboratories. To support this claim, petitioners presented a standing contract[5] with Astrazeneca Pharmaceuticals, Interphil's predecessor-in-interest. The contract contained stipulations pertaining to the client's policy of replacing guards on duty every six (6) months without repeat assignment. The agency further posits that respondent guards were directed several times to report to the office for their new assignments but they failed to comply with such directives.

A review of the records reveals the following timeline: (1) on 20 January 2007, the agency sent respondents notices informing them that they were being relieved from their current posts pursuant to a standing contract with Interphil Laboratories[6] with directives for respondents to report to the office for their new assignments; (2) on 7 February 2007, the agency sent another letter addressed to Robis, directing him to report to the office for his new assignment;[7] (3) on 22 February 2007, the first complaint for illegal dismissal was filed with the Labor Arbiter;[8] (4) on 26 March 2007, a hearing before the Executive Labor Arbiter was conducted, where petitioner agency's representative presented respondents an offer to return to work;[9] (5) the agency sent respondents letters dated 24[10] and 26[11] April 2007, directing them to clarify their intentions as they have not been reporting to seek new assignments; (6) on 3 August 2007, respondents filed a Supplemental Complaint,[12] the purpose of which was to

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[5] *Id*. at 396-400.

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

[7] *Id*. at 101.

[8] *Id*. at 75.

[9] *Id*. at 110.

[10] *Id*. at 99.

[11] *Id*. at 100.

[12] *Id*. at 76.

anticipate the possibility that the agency might set up the defense of pre-maturity of filing of the constructive dismissal complaint; (7) respondents executed their respective complaint affidavits on 8 August 2007;[13] (8) and finally after the parties submitted their respective position papers, the Executive Labor Arbiter rendered a decision on 4 January 2008.[14]

Finding that respondents' failure to comply with the Memoranda amounted to abandonment, the Labor Arbiter dismissed the complaint.[15] The Labor Arbiter concluded that there can be no dismissal to speak of, much less an illegal dismissal. On appeal, the NLRC reversed the 4 January 2008 decision of the the Executive Labor Arbiter, ultimately finding respondents to have been illegally dismissed. The NLRC ruled that the letters directing respondents to "clarify their intentions" were not in the nature of return-to-work orders, which may effectively interrupt their floating status. The NLRC observed that the Memoranda received by respondents were but mere afterthoughts devised after the case for illegal dismissal was filed. The NLRC also put the agency to task for failing to traverse the guards' averment that there were other employee-guards who stayed with the same client beyond the six-month term imposed.

Aggrieved, the petitioners brought the case to the Court of Appeals, asking the court to issue an extraordinary writ of *certiorari* to reverse the NLRC decision. Reiterating that the agency had no legitimate reasons for placing respondents on prolonged floating status, the appellate court affirmed the decision of the NLRC. The dispositive portion of the NLRC decision reads:

WHEREFORE, premises considered, the decision of the Executive Labor Arbiter Fatima Jambaro-Franco dated 4 January 2008 is reversed

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[13] *Id*. at 109-115.

[14] *Id*. at 380-383.

[15] *Id*.

and set aside and a new one is rendered ordering [petitioners] to pay [respondents] the following:

1. Backwages from 21 January 2007 until finality of this Decision;

2. Separation pay equivalent to one-month salary for every year of service from the date of employment as appearing in the complaint also up to finality of this Decision; and

3. Salary differentials for the period not yet barred by prescription.

All other claims are dismissed for lack of merit.[16]

Petitioners sought a reconsideration of the decision but the appellate court denied the same. Hence, this Petition for Review on *Certiorari*.

Our Ruling

After a careful evaluation of the records of the case, this Court finds no reversible error in the NLRC decision as affirmed by the Court of Appeals. The petition is denied for lack of merit.

Placement on floating status as a management prerogative

The Court is mindful of the fact that most contracts for services stipulate that the client may request the replacement of security guards assigned to it.[17] Indeed, the employer has the right to transfer or assign its employees from one area of operation to another, "provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the transfer is not motivated by discrimination or bad faith, or effected as a form of punishment or demotion without sufficient cause."[18] During

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[16] *Id*. at 69.

[17] *Salvaloza v. NLRC*, 650 Phil. 543, 557 (2010).

[18] *Id*.

that period of time when they are in between assignments or when they are made to wait for new assignments after being relieved from a previous post, guards are considered on temporary "off-detail" or under "floating status". It has long been recognized by this Court that the industry practice of placing security guards on floating status does not constitute dismissal, as the assignments primarily depend on the contracts entered into by the agency with third parties[19] and the same is a valid exercise of management prerogative. However, such practice must be exercised in good faith and courts must be vigilant in assessing the different situations, especially considering that the security guard does not receive any salary or any financial assistance provided by law when placed on floating status.[20]

Constructive Dismissal

Though respondents were not *per se* dismissed on 20 January 2007 when they were ordered relieved from their posts, we find that they were constructively dismissed when they were not given new assignments. As previously mentioned, placing security guards under floating status or temporary off-detail has been an established industry practice. It must be emphasized, however, that they cannot be placed under floating status indefinitely; thus, the Court has applied Article 292[21] (formerly Article 286) of the Labor Code by analogy to set the specific period of temporary off-detail to a maximum of six (6) months.[22]

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[19] *Id*. at 557-558.

[20] *Id*. at 557.

[21] Art 292. *When employment not deemed terminated* — The *bona fide* suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

[22] *Exocet Security and Allied Services Corporation v. Serrano*, G.R. No. 198538, 29 September 2014, 737 SCRA 40, 51-52.

It must also be clarified that such provision does not entitle agencies to retain security guards on floating status for a period of not more than six (6) months for whatever reason. Placing employees on floating status requires the dire exigency of the employer's *bona fide* suspension of operation. In security services, this happens when there is a surplus of security guards over available assignments as when the clients that do not renew their contracts with the security agency are more than those clients that do.[23]

The crux of the controversy lies in the consequences of the lapse of a significant period of time without respondents having been reassigned. Petitioner agency faults the respondents for their repeated failure to comply with the directives to report to the office for their new assignments. To support its argument, petitioner agency submitted in evidence notices addressed to respondents, which read:

> You are directed to report to the undersigned **to clarify your intentions as you have not been reporting to seek a new assignment after your relief from Interphil.**
>
> To this date, **we have not received any update from you** neither did you update your government requirements x x x
>
> We are giving you up to May 10, 2007 to comply or we will be forced to drop you from our roster and terminate your services for abandonment of work and insubordination.
>
> Consider this our final warning.[24] (Emphasis ours)

As for respondents, they maintain that the offers of new assignments were mere empty promises. Respondents claim that they have been reporting to the office for new assignments only to be repeatedly turned down and ignored by petitioner's office personnel.[25]

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[23] *Sentinel Security Agency, Inc. v. NLRC*, 356 Phil. 435, 446 (1998).

[24] *Rollo*, pp. 99-100.

[25] *Id*. at 109-115.

We rule that such notices were mere afterthoughts. The notices were allegedly sent to respondents on 24 and 26 April 24 2007, a month after the hearing before the Executive Labor Arbiter. By the time the notices were sent, a complaint for illegal dismissal with a prayer for reinstatement was already filed. In fact, the agency, through its representative, already had the chance to discuss new assignments during the hearing before the Labor Arbiter. Instead of taking the opportunity to clarify during the hearing that respondents were not dismissed but merely placed on floating status and instead of specifying details about the available new assignments, the agency merely gave out empty promises. No mention was made regarding specific details of these pending new assignments. If respondent guards indeed had new assignments awaiting them, as what the agency has been insinuating since the day respondents were relieved from their posts, the agency should have identified these assignments during the hearing instead of asking respondents to report back to the office. The agency's statement in the notices – that respondents have not clarified their intentions because they have not reported to seek new assignments since they were relieved from their posts – is specious at best. As mentioned, before these notices were sent out, a complaint was already filed and a hearing before the Labor Arbiter had already been conducted. The complaint clarified the intention of respondents. Indeed, respondents' complaint for illegal dismissal with prayer for reinstatement is inconsistent with the agency's claim that respondents did not report for reassignment despite the notices directing them to do so. It is evident that the notices sent by the agency were mere ostensible offers for new assignments. It was intended to cover the illegality of the termination of respondents' employment.

Lack of service agreement for a continuous period of 6 months as an authorized cause for termination

It is significant to note that had the reason for such failure to reassign respondents been the lack of service agreements for a continuous period of six (6) months, petitioner agency

could have exercised its right to terminate respondents for an authorized cause upon compliance with the procedural requirements.

On this score, Department Order No. 14, Series of 2001[26] (DO 14-01) of the Department of Labor and Employment is instructive. Section 9.3 of the same provides:

9.3 *Reserved status* – x x x

x x x x x x x x x

If after a period of 6 months, the security agency/employer cannot provide work or give assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as described in subsection 6.5

x x x x x x x x x

In relation thereto, Section 6.5 of DO 14-01 treats such lack of service assignment for a continuous period of six (6) months as an authorized cause for termination of employment entitling the security guard to separation pay, to wit:

6.5 *Other Mandatory Benefits*. In appropriate cases, security guards/ similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums form their coverage:

a. Maternity benefit as provided under SS Law;

b. Separation pay if the termination of employment is for **authorized cause** as provided by law and as enumerated below:

Half-Month Pay Per Year of Service, but in no case less than One Month Pay if separation pay is due to:

1. Retrenchment or reduction of personnel effected by management to prevent serious losses;
2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;

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[26] Guidelines Governing the Employment and Working Conditions of Security Guards and Similar Personnel in the Private Security Industry.

3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees;

4. **Lack of service assignment for a continuous period of 6 months.** (Emphasis and underlining supplied)

x x x x x x x x x

It bears stressing that the only time a prolonged floating status is considered an authorized cause for dismissal is when the security agency experiences a surplus of security guards brought about by lack of clients.[27] We quote with approval the pertinent portion of the NLRC's decision as affirmed by the appellate court, to wit:

> Being placed on floating status is only legitimate when guaranteed by bona fide business exigencies. In security services, this happens when there is a surplus of security guards over available assignments as when the clients that do not renew their contracts with the security agency are more than those clients that do x x x.[28]

Otherwise stated, absent such justification, the placing of a security guard on floating status is tantamount to constructive dismissal. And, when the floating status is justified, the lapse of a continuous period of six (6) months results in an authorized cause for termination of employment, the security guard being entitled, however, to separation pay.

As for the procedural aspect, employer agencies must be reminded that to validly terminate a security guard for lack of service assignment for a continuous period of six months, the agency must comply with the provisions of Article 289 (previously Art. 283) of the Labor Code,[29] "which mandates

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[27] *Reyes v. RP Guardians Security Agency Inc.*, 708 Phil. 598, 606 (2013).

[28] *Rollo*, pp. 65-66.

[29] Art. 289. *Closure of establishment and reduction of personnel.* — The employer may also terminate the employment of any employee due to x x x retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of

that a written notice should be served on the employee on temporary off-detail or floating status and to the DOLE one (1) month before the intended date of termination."[30] Sec. 9.2 of DO 14-01 provides for a similar procedure, to wit:

> 9.2 Notice of Termination – In case of termination of employment due to authorized causes provided in Article 283 and 284 of the Labor Code and in the succeeding subsection, the employer shall serve a written notice on the security guard/personnel and the DOLE at least one (1) month before the intended date thereof.

It cannot be denied that the placement of security guards on floating status may be subject to abuse by agencies, considering that they are not obliged to pay the security guards while placed on floating status. Recognizing the jurisprudence elaborating on the application of DO 14-01, we now provide a summary as follows:

The floating status period, wherein the security guards are not paid, should not last longer than six (6) months as provided by law. Before the lapse of six (6) months, the agency should have recalled the security guard for a new assignment. If the agency failed to do so due to the lack of service agreements for a continuous period of six (6) months, an authorized cause for dismissal as per DO 14-01, the security guard may be considered permanently retrenched and validly dismissed upon compliance with the procedural requirements laid down by the Department Order and the Labor Code.[31] It must be emphasized

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circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x

In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[30] *Exocet Security and Allied Services Corporation v. Serrano*, *supra* note 22 at 55.

[31] *Id.* at 60.

however, that in order for the dismissal to be valid and in order for the employer agency to free itself from any liability for illegal dismissal, the justification for the failure to reassign should be the lack of service agreements for a continuous period of six (6) months, aside from the other authorized causes provided by the Labor Code. Corollarily, placing the security guard on floating status in bad faith, as when there is failure to reassign despite the existence of sufficient service agreements will make the employer agency liable for illegal dismissal. In such cases, there is no *bona fide* business exigency which calls for the temporary retrenchment or laying-off of the security guards. Lastly, if six (6) months have already lapsed and the employer agency failed to either (a) reassign the security guard or (b) validly dismiss and give him/her the corresponding separation pay, the security guard may be considered to have been constructively dismissed.[32]

On the finding that respondents are entitled to their money claims

In its decision, the Court of Appeals discussed how the NLRC might have erred in its computations of the wages received by the private respondents. However, despite such observation, the appellate court dismissed the petition for *certiorari*, ultimately holding that the NLRC based its decision on all the evidence presented, with nary an abuse of the exercise of its discretion. The appellate court found that petitioners failed to discharge their burden of showing at least an abuse of discretion on the part of the NLRC, when the latter found that the security guards were underpaid. Petitioners now fault the appellate court for affirming the NLRC decision declaring them liable for private respondents' monetary claims.

Petitioners' contention is bereft of merit

In petitioners' Motion for Reconsideration of the NLRC decision, they invested heavily in the argument about the validity

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[32] *Agro Commercial Security Services Agency, Inc. v. NLRC*, 256 Phil. 1182, 1188 (1989).

of the dismissal, stating only briefly in the penultimate paragraph their manifestation to reserve a purported right to submit additional evidence in a supplemental pleading, if necessary to strengthen their arguments regarding the award of monetary claims. The Court of Appeals correctly ruled that such scheme subverts the reglementary periods established by law and more significantly, the NLRC would no longer have the opportunity to correct itself, assuming errors, since the Motion for Reconsideration filed before it did not detail the computations regarding monetary benefits. Said computations were only subsequently raised in their petition before the appellate court.

In the Court of Appeals, petitioners adopted a similar scheme. In their Petition for *Certiorari*, they did not anymore dispute the NLRC's determinations as to the monetary aspects. Instead, their arguments on the alleged issue of monetary awards were inserted in their Reply to Comment pleading. The Court of Appeals correctly ruled that such scheme contradicts elementary due process as the arguments raised were not dealt with in the comment the Reply supposedly responds to.

From the foregoing, it is quite obvious that the NLRC may not be faulted for relying on the evidence presented before it when it made its computations for underpayment. Neither may the appellate court be faulted for declaring that the NLRC did not abuse its discretion. The task of resolving the issue on monetary claims, purely factual, properly pertains to the NLRC as the quasi-judicial appellate body to which these documents were presented to review the arbiter's ruling.[33] The appellate court correctly ruled that the usual appeal in labor cases is exhausted after the NLRC has decided. Petitioner cannot fault the Court of Appeals in affirming the NLRC decision despite the alleged computational error as the special civil action of *certiorari* is a remedy to correct errors of jurisdiction and not mere errors of judgment. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctable through the original civil action of *certiorari*.

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[33] *Pasig Cylinder Mfg., Corp., et al. v. Rollo, et al.,* 644 Phil. 588, 600 (2010).

The present petition is a Rule 45 petition reviewing a Rule 65 ruling of the Court of Appeals. This Court's jurisdiction is thus limited to errors of law which the appellate court might have committed in its Rule 65 ruling.[34] In essence, in ruling for legal correctness, "we have to view the CA's decision in the same context that the *petition for certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case, was correct."[35] After a meticulous review of the facts of the case, the records, relevant laws and jurisprudence, we rule that the Court of Appeals correctly determined that the NLRC did not abuse its discretion when it held that respondents were constructively dismissed and entitled to their monetary claims.

WHEREFORE, the petition is **DENIED**. The assailed 27 August 2010 Decision and 25 November 2010 Resolution of the Court of Appeals in CA-G.R. SP No. 110905 are **AFFIRMED**. Accordingly, petitioners Soliman Security Services, Inc. and Teresita L. Soliman are hereby **ORDERED** to pay respondents Igmedio C. Sarmiento, Jose Jun Cada, and Ervin R. Robis, to wit:

1. Backwages from 21 January 2007 until finality of this decision;
2. Separation pay equivalent to one-month salary for every year of service from the date of employment as appearing in the complaint also up to finality of this decision; and
3. Salary differentials for the period not yet barred by prescription.

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[34] *Magsaysay Maritime Corporation, et al. v. Simbajon*, G.R. No. 203472, 9 July 2014, 729 SCRA 631, 641-642 (2014).

[35] *Id.* at 642.

All other claims are dismissed for lack of merit.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 203880. August 10, 2016]

VICTORIA ECHANES, *petitioner, vs.* **SPOUSES PATRICIO HAILAR AND ADORACION HAILAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; THE ONLY QUESTION TO RESOLVE IS WHO BETWEEN THE PARTIES IS ENTITLED TO THE PHYSICAL POSSESSION OF THE PROPERTY IN DISPUTE; ISSUE OF OWNERSHIP MAY BE PROVISIONALLY DETERMINED FOR THE SOLE PURPOSE OF RESOLVING THE ISSUE OF PHYSICAL POSSESSION.— [T]he only question that the courts must resolve in an unlawful detainer case is who between the parties is entitled to the physical or material possession of the property in dispute. The main issue is possession *de facto*, independently of any claim of ownership or possession *de jure* that either party may set forth in his pleading. The plaintiff must prove that it was in prior physical possession of the premises until it was deprived thereof by the defendant. The principal issue must be possession *de facto*, or actual possession, and ownership is merely ancillary to such issue. However, where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has a better right to possess the property. In this regard, Section 16,

Rule 70 of the Rules of Court allows the courts to provisionally determine the issue of ownership for the sole purpose of resolving the issue of physical possession. Otherwise stated, when the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership is to be resolved only to determine the issue of possession.

2. ID.; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS; WHEN THE FINDINGS OF THE LOWER COURTS DIFFER FROM THOSE OF THE APPELLATE COURT.— The Court notes that the arguments raised here necessarily require a re-evaluation of the parties' submissions and the CA's factual findings. Ordinarily, this course of action is proscribed in a petition for review on *certiorari*; that is, a Rule 45 petition resolves only questions of law, not questions of fact. Moreover, factual findings of the CA are generally conclusive on the parties, and therefore, not reviewable by this Court provided they are supported by evidence on record or substantial evidence. By way of exception, however, the Court resolves factual issues when the findings of the MTCC and the RTC differ from those of the CA, as in this case.

3. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ALLEGED TOLERANCE MUST BE PROVED BY SHOWING THE OVERT ACTS.— In the case of *Quijano v. Amante*, it was held that the acts of tolerance must be proved showing the overt acts as to when and how the respondents entered the properties and who specifically allowed them to occupy the same. There should be any supporting evidence on record that would show when the respondents entered the properties or who had granted them to enter the same and how the entry was effected. Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

4. ID.; ID.; ID.; POSSESSION IN THE CONCEPT OF AN OWNER MANIFESTED BY PRIOR PHYSICAL POSSESSION AND PAYMENT OF REALTY TAX.— There is no dispute that the respondents had continuously and openly occupied and possessed, in the concept of an owner, the subject property from the time they purchased it from Eduardo Cuenta. They segregated and declared for taxation purposes as early as 1959 the portion of Lot No. 2297-A consisting of 231 square meters. The property was consistently declared for taxation purposes until 2007. While tax declarations and realty tax

payments are not conclusive proofs of possession, they are good *indicia* of possession in the concept of an owner based on the presumption that no one in his right mind would be paying taxes for a property that is not his actual or constructive possession. At the very least, they constitute proof that the holder has a claim of title over the property.

APPEARANCES OF COUNSEL

Robert B. Tudayan for petitioner.
Juan Abaya, Jr. for respondents.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision[2] dated March 23, 2012, and Resolution[3] dated October 9, 2012 of the Court of Appeals in CA-G.R. SP No. 115688. The CA reversed the Decision[4] of the Regional Trial Court, Branch 23, of Candon City, Ilocos Sur in Civil Case No. 1146-C, and reinstated the Decision of the Municipal Circuit Trial Court (*MCTC*) of Sta. Cruz-Sta. Lucia, Ilocos Sur[5] in Civil Case No. 552 dismissing the Complaint for Ejectment with Damages filed by petitioner.

The factual antecedents are as follows:

The late Eduardo Cuenta was the owner of an unregistered parcel of land with an area of 1,447 square meters, more or

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[1] *Rollo,* pp. 8-18.

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Rosalinda Asuncion-Vicente and Antonio L. Villamor, concurring; *id.* at 20-32.

[3] *Rollo,* pp. 33-34.

[4] *Id.* at 35-47.

[5] *Id.* at 48-54.

less, located at Poblacion Anquileng (now Burgos), Sta. Lucia, Ilocos Sur designated as Lot No. 2297 of the Cadastral Survey of Sta. Lucia, Ilocos, Sur. As the owner of the said property, he was issued Tax Declaration No. 7622-C.[6]

On July 8, 1996, the heirs of Eduardo Cuenta executed an Extrajudicial Settlement[7] dividing and adjudicating unto themselves the parcel of land left by Eduardo Cuenta.

A portion of Lot No. 2297 denominated as Lot No. 2297-A comprising 495 square meters was adjudicated to petitioner who is one of the heirs (granddaughter) of Eduardo Cuenta. Thereafter, petitioner applied for a free patent over Lot No. 2997-A. Accordingly, an Original Certificate of Title No. P-43056 was issued in her name by the Register of Deeds of Ilocos Sur on October 15, 1996.[8]

A portion of Lot No. 2291-A with an area of more or less 80 square meters is currently occupied by respondents. Since petitioner's children are in need of the area currently occupied by respondents, petitioner sent respondents a Notice to Vacate[9] dated March 12,2009. The demand letter was received by the respondents on March 13, 2009. Despite receipt of said demand letter, respondents refused to vacate the premises.[10]

On April 14, 2009, petitioner filed a Complaint for Ejectment with Damages before the Municipal Circuit Trial Court (*MCTC*) of Sta. Cruz-Sta. Lucia, Ilocos Sur.[11]

Petitioner averred in her complaint that during the lifetime of her parents, respondents asked her parents that they be allowed to build their *nipa house* on the subject lot. The request by

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[6] *Id.* at 20, 92.

[7] *Id.* at 21, 90.

[8] *Id.* at 21, 89.

[9] *Id.* at 21.

[10] *Id.*

[11] *Id.* at 85.

respondents was allegedly made in the presence of the petitioner. The request was granted by petitioner's parents on the condition that respondents would voluntarily vacate the land when the petitioner's family would need the same. Thus, according to petitioner, respondents' continued possession and occupation of the subject lot is out of tolerance and permission granted to them by petitioner and her parents.[12]

In their Answer, respondents countered that the late Domingo Joven (who died in 1967),[13] the father of respondent Adoracion Joven Hailar, purchased the subject lot from the late Eduardo Cuenta after World War II as evidenced by Tax Declaration No. 12141-C[14] in the name of Domingo Joven issued in 1959. From then on, respondent Adoracion Joven Hailar and her siblings occupied and exercised acts of dominion, and have been in possession of the land exclusively, publicly, continuously for more than 40 years as evidenced by tax declarations and realty tax payments made by them. They built their family house thereon, and later, a house made of concrete materials was built valued at not less than ₱50,000.00.[15]

On April 19, 2010, the MCTC of Sta. Cruz - Sta. Lucia, Ilocos Sur, rendered a Decision, the decretal portion[16] of which states:

> WHEREFORE, premises considered, the instant Complaint is hereby DISMISSED without prejudice on the part of the plaintiff in filing an *accion publiciana* or *accion reivincicatoria*, before the proper court. There being no proof of evident bad faith against the plaintiff in filing the instant case, no award of fees or damages may be granted.
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> SO ORDERED.

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[12] *Id.* at 36, 85.

[13] *Id.* at 68.

[14] *Id.* at 104.

[15] *Id.* at 49

[16] *Id.* at 91.

Thereafter, petitioner elevated the case before the Regional Trial Court (*RTC*), Branch 23, of Candon City Ilocos Sur. On August 17, 2010, the RTC reversed and set aside the Decision of the MCTC. The dispositive portion of the decision states:

> IN VIEW OF THE FOREGOING, the Decision of the 11th Municipal Circuit Trial Court of Sta. Cruz-Sta. Lucia, dated April 19, 2010, is hereby REVERSED AND SET ASIDE. Judgment is hereby rendered in favor of the plaintiff-appellant, Victoria Echanes, and against the defendants-appellees, Spouses Patricio Hailar and Adoracion Hailar. The Court further orders:
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> 1. The Spouses Patricio Hailar and Adoracion Hailar, and any person claiming title under them, to vacate the property-in-dispute, including the area where they built their house and to surrender the land in litigation to Victoria Echanes;
> 2. The Spouses Patricio Hailar and Adoracion Hailar, and any person claiming title under them to pay to Victoria Echanes the amount of ₱2,000.00 per month as compensation for the use and occupation of the property-in-dispute, from March 28, 2009 and every month thereafter until they shall have finally vacated the premises;
> 3. The Spouses Patricio Hailar and Adoracion Hailar to pay attorney's fees in the amount of ₱30,000.00 which is just and reasonable under the circumstances;
> 4. The Spouses Patricio Hailar and Adoracion Hailar to pay the costs of the proceedings.
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> SO ORDERED.[17]

Aggrieved, respondents filed a petition for review before the Court of Appeals (*CA*). In a Decision dated March 23, 2012, the CA reversed and set aside the decision of the RTC and reinstated and affirmed the decision of the MCTC. The *fallo*[18] states:

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[17] *Id.* at 112 and 113.

[18] *Id.* at 30.

WHEREFORE, the appeal is GRANTED. The Decision dated August 17, 2010 of the Regional Trial Court, Branch 23 of Candon City, Ilocos Sur is REVERSED AND SET ASIDE. The decision dated April 19, 2010 of the Municipal Circuit Trial Court of Sta. Cruz, Ilocos Sur is REINSTATED AND AFFIRMED.

SO ORDERED.

A motion for reconsideration was filed by petitioner but the same was denied by the CA on October 9, 2010.[19]

Hence, this petition, raising the following issues for resolution:

1. The CA erred in holding that petitioner failed to prove tolerance, by preponderance of evidence with respect to the possession of the respondents over the subject lot;
2. The CA erred in holding that petitioner has failed to discharge her burden of proving her ejectment complaint by preponderance of evidence; and
3. The CA erred when it reversed and set aside the decision of the RTC.

To begin with, the only question that the courts must resolve in an unlawful detainer case is who between the parties is entitled to the physical or material possession of the property in dispute.[20] The main issue is possession *de facto*, independently of any claim of ownership or possession *de jure* that either party may set forth in his pleading.[21] The plaintiff must prove that it was in prior physical possession of the premises until it was deprived thereof by the defendant.[22] The principal issue must be possession

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[19] *Id.* at 33.

[20] *Estanislao, et al. v. Spouses Gudito,* 706 Phil. 330, 335-336 (2013), citing *Pajuyo v. Court of Appeals,* 474 Phil. 557, 579 (2004).

[21] *Caparros v. Court of Appeals,* 252 Phil. 783, 787 (1989); *Alvir v. Hon. Vera, etc., et al.*, 215 Phil. 308, 311 (1984).

[22] *Javelosa v. Court of Appeals,* 333 Phil. 331, 341 (1996); *Maddammu v. Judge of Municipal Court of Manila, etc., et al.,* 74 Phil. 230, 231 (1943); *Aguilar v. Cabrera,* 74 Phil. 658, 665-666 (1944).

de facto, or actual possession, and ownership is merely ancillary to such issue.

However, where the parties to an ejectment case raise the issue of ownership, the courts may pass upon that issue to determine who between the parties has a better right to possess the property.[23] In this regard, Section 16, Rule 70 of the Rules of Court allows the courts to provisionally determine the issue of ownership for the sole purpose of resolving the issue of physical possession. Otherwise stated, when the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership is to be resolved only to determine the issue of possession.[24]

In the case at bar, the petitioner derived her alleged right to possess the subject land from Original Certificate of Title No. P-43056 issued in her name by the Register of Deeds of Ilocos Sur on October 15, 1996. Petitioner contends that the issuance of said title presupposes her having been in possession of the property at one time or another.

On the other hand, the respondents' alleged right to possess the disputed property is based on having acquired the subject lot by Domingo Joven through purchase from Eduardo Cuenta. Tax Declaration No. 7622-C covering Lot No. 2207 was issued in 1952 in the name of Eduardo Cuenta. While Tax Declaration No. 12141-C, which is derived from and partly cancels Tax Declaration No. 7622-C, was issued in 1959 in the name of Domingo Joven. The land covered by Tax Declaration No. 12141-C has an area of 231 square meters.

The RTC opined that Eduardo Cuenta could have not sold the subject property after World War II, or on 1946, because he died in 1941 as alleged in the Extrajudicial Settlement. It noted that the tax declaration of respondents, dated 1959, does not indicate any mode of conveyance such that *"no other*

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[23] *Spouses Dela Cruz v. Spouses Capco,* 729 Phil. 624, 637 (2014).

[24] Rules of Court, Rule 70, Section 16; see also *Wilmon Auto Supply Corp. v. Court of Appeals,* 284 Phil. 217, 232(1992).

conclusion can be arrived at other than that Eduardo Cuenta retained the ownership and possession of the entire residential land under Tax Declaration No, 7622-C, and that upon his death in 1941, his rights over the property were transmitted by operation of law to his surviving heirs, including the plaintiff-appellant (petitioner).[25] Therefore, according to the RTC, the allegation of petitioner that respondents occupied the disputed property by mere tolerance of the parents of petitioner is easier to believe.[26]

In their Comments, respondents submit that the issuance of Tax Declaration No. 7622-C in 1952, covering Lot No. 2207 in the name of Eduardo Cuenta, disproves the finding of the RTC that Eduardo Cuenta died on May 15, 1941 as stated in the Deed of Extrajudicial Settlement. They argued that the purchase of the property took place between the year 1946 (the end of World War II) and 1952 (when the tax declaration was issued in the name of Domingo Joven).

It bears to reiterate that settled is the rule that the only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. [27] It does not even matter if a party's title to the property is questionable.[28] In an unlawful detainer case, the sole issue for resolution is the physical or material possession of the property involved, independent of any claim of ownership by any of the party litigants.[29] Where the issue of ownership is raised by any of the parties, the courts may pass upon the same in order to determine who has the right to possess the property. The adjudication is, however, merely provisional and would not

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[25] *Rollo,* p. 107.

[26] *Id*.

[27] *Barrientos v. Rapal,* 669 Phil. 438, 444 (2011).

[28] *Id.*

[29] *Id*.

bar or prejudice an action between the same parties involving title to the property.[30]

Therefore, since the issue of ownership is raised in this unlawful detainer case, its resolution boils down to which of the parties' respective evidence deserves more weight.[31]

At the outset, respondents stated in their Comment[32] that the issue on tolerance is a question of fact and is an improper subject of a petition for review under Rule 45, and that the finding of the CA on the absence of tolerance on the part of petitioner is supported by substantial evidence and is conclusive and binding on the parties and on this Court.

The Court notes that the arguments raised here necessarily require a re-evaluation of the parties' submissions and the CA's factual findings. Ordinarily, this course of action is proscribed in a petition for review on *certiorari*; that is, a Rule 45 petition resolves only questions of law, not questions of fact. Moreover, factual findings of the CA are generally conclusive on the parties, and therefore, not reviewable by this Court provided they are supported by evidence on record or substantial evidence.[33] By way of exception, however, the Court resolves factual issues when the findings of the MTCC and the RTC differ from those of the CA, as in this case.[34]

To prove the allegation of tolerance on the part of petitioner, she presented, among others, a portion of Transcript of Stenographic Notes (*TSN*)[35] dated September 11, 2003 taken

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[30] *Id*.

[31] *Spouses Chingkoe v. Spouses Chingkoe,* 709 Phil. 696, 707(2013).

[32] *Rollo,* p. 119.

[33] *Dela Cruz v. Court of Appeals,* 539 Phil. 158, 169 (2006); *Development Bank of the Phils. v. Traders Royal Bank,* 642 Phil. 547, 556 (2010).

[34] *Dela Cruz v. Hermano,* G.R. No. 160914, March 25, 2015, 754 SCRA 231, 238, citing *Nenita Quality Foods Corp. v. Galabo, et al.*, 702 Phil. 506, 515 (2013).

[35] Exhibit "L", *rollo,* p. 82.

during the hearing in the case for Quieting of Title[36] and Annulment of Title[37] filed against petitioner before the same MTC,[38] and argued why the same was not considered by the MTC in the resolution of the issue.[39] A perusal of the said TSN would show that Filomena Carbonell (sister of petitioner)[40] testified that after World War II, Domingo Joven approached her aunt and begged that he be allowed to build a house on the disputed property. This lone statement of said witness in another case revealed somehow that it was not the parents of petitioner who allegedly tolerated the occupation of respondents contrary to the allegation of petitioner in her complaint.[41]

In the case of *Quijano v. Amante,*[42] it was held that the acts of tolerance must be proved showing the overt acts as to when and how the respondents entered the properties and who specifically allowed them to occupy the same. There should be any supporting evidence on record that would show when the respondents entered the properties or who had granted them to enter the same and how the entry was effected.[43] Without these allegations and evidence, the bare claim regarding "tolerance" cannot be upheld.

As to the claim of respondents, it appears that the Deed of Extrajudicial Settlement was executed by the grandchildren (including petitioner) of Eduardo Cuenta. Since it cannot be ascertained from the deed as to when the children of Eduardo

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[36] Civil Case No. 275.

[37] Civil Case No. 285.

[38] Both cases were dismissed for lack of jurisdiction, laches and prescription. (*Rollo,* p. 12)

[39] *Rollo,* p. 13.

[40] *Id.* at 107.

[41] *Id.* at 85.

[42] G.R. No. 164277, October 8, 2014, 737 SCRA 552, 564-565.

[43] *Padre v. Malabanan,* 532 Phil. 714 (2006); *Sarona, et al. v. Villegas, et al.,* 131 Phil. 365 (1968).

Cuenta died, or whether all the children of Eduardo Cuenta predeceased him, it is, therefore, not certain to say that the grandchildren inherited the subject property in 1941 when Eduardo Cuenta allegedly died. Assuming the children of Eduardo Cuenta (including the parent of petitioner) did not predecease Eduardo Cuenta, petitioner would then inherit the property only after the death of her parent, which date is not revealed in the deed. It is, therefore, an error on the part of the RTC to state that petitioner inherited the subject property in 1941, ahead of the alleged sale to respondents which took place after the World War, or sometime in 1946, or thereafter.

In an action for forcible entry and detainer, if plaintiff can prove prior physical possession in himself, he may recover such possession even from the owner, but, on the other hand, if he cannot prove such prior physical possession, he has no right of action for forcible entry and detainer even if he should be the owner of the property.[44]

There is no dispute that the respondents had continuously and openly occupied and possessed, in the concept of an owner, the subject property from the time they purchased it from Eduardo Cuenta. They segregated and declared for taxation purposes as early as 1959 the portion of Lot No. 2297-A consisting of 231 square meters. The property was consistently declared for taxation purposes until 2007. While tax declarations and realty tax payments are not conclusive proofs of possession, they are good *indicia* of possession in the concept of an owner based on the presumption that no one in his right mind would be paying taxes for a property that is not his actual or constructive possession.[45] At the very least, they constitute proof that the holder has a claim of title over the property.

As correctly stated by the CA, the fact that respondents' documents traverse several decades, from 1959 to 2007, is an

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[44] *Ocampo v. Heirs of Bernardino Dionisio,* G.R. No. 191101, October 1, 2014, 737 SCRA 381, 391-392, citing *Salud Lizo v. Camilo Carandang, et al.,* 73 Phil. 649 (1942).

[45] *Dela Cruz v. Hermano, supra* note 34, at 243.

indication that respondents never abandoned their right to the property and have continuously exercised rights of ownership over the same. Their *bona fide* claim of acquisition of ownership was especially strengthened by their actual possession of property; in fact, respondents built a concrete house thereon. This adverse possession by the respondents belies the allegation of occupation by tolerance espoused by petitioner.

We agree with the ruling of the MTC that, compared to the bare assertion of petitioner that her parents merely tolerated respondents' possession, the version of the respondents that they are occupying the property by virtue of the conveyance in their favor through purchase many years ago is more credible.[46]

This ruling was affirmed by the CA, thus:

In emphasis, the petitioners very much placed in issue the alleged tolerance of the respondent's parents. In the law of evidence, allegations are not proofs, no more so when, as here the other party very much denied those allegations. The fatal error committed by the RTC is that it mistook allegations as proofs, ignoring the fact that those allegations were denied by petitioners.

In the akin case of *Florentino Go, Jr., et al. v. Court of Appeals,* it was ruled that:

xxx x x x x x x

> It is settled that the one whose stay is merely tolerated becomes a deforciant illegally occupying the land the moment he is required to leave. It is essential in unlawful detainer cases of this kind, that the plaintiff's supposed acts of tolerance, must have been present right from the start of the possession which is later sought to be recovered. This is where the petitioners' cause of action fails. The appellate court in full agreement with the MTC, made the conclusion that the alleged tolerance by their mother and after her death, by them, was unsubstantiated."

We agree with the MCTC that respondent failed to present evidence to support her claim that the occupation of the petitioners (respondents

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[46] *Rollo,* p. 90.

herein) was by mere tolerance. No weight should be given to the bare allegation of the respondent that petitioners' possession of the subject property was merely by virtue of her parents' tolerance because "bare allegations unsubstantiated by evidence, are not equivalent to proof under our Rules."[47]

The summary character of the proceedings in an action for forcible entry or unlawful detainer is designed to quicken the determination of possession *de facto* in the interest of preserving the peace of the community, but the summary proceedings may not be proper to resolve ownership of the property. Consequently, any issue on ownership arising in forcible entry or unlawful detainer is resolved only provisionally for the purpose of determining the principal issue of possession.[48] On the other hand, regardless of the actual condition of the title to the property and whatever may be the character of the plaintiffs prior possession, if it has in its favor priority in time, it has the security that entitles it to remain on the property until it is lawfully ejected through an *accion publiciana* or *accion reivindicatoria* by another having a better right.[49]

Thus, the unlawful detainer and forcible entry suits, under Rule 70 of the Rules of Court, are designed to summarily restore physical possession of a piece of land or building to one who has been illegally or forcibly deprived thereof, without prejudice to the settlement of the parties' opposing claims of juridical possession in appropriate proceedings. These actions are intended to avoid disruption of public order by those who would take the law in their hands purportedly to enforce their claimed right of possession. In these cases, the issue is pure physical or *de facto* possession, and pronouncements made on questions of ownership are provisional in nature. The provisional

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[47] *Rollo,* pp. 28-29. (Citations omitted)

[48] *Spouses Refugia v. Court of Appeals,* 327 Phil. 982, 1006 (1996).

[49] *German Management & Services, Inc. v. Court of Appeals,* 258 Phil. 289, 293 (1989).

determination of ownership in the ejectment case cannot be clothed with finality.[50]

In fact, Section 18, Rule 70 of the Rules of Court expressly provides that "a judgment rendered in an action for forcible entry or unlawful detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land."

Hence, We need to stress that the ruling in this case is limited only to the determination as to who between the parties has a better right to possession. It will not bar any of the parties from filing an action with the proper court to resolve conclusively the issue of ownership.

WHEREFORE, the petition is **DENIED.** The Decision of the Court of Appeals dated March 23, 2012, and its Resolution dated October 9, 2012, in CA-G.R. SP No. 115688 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Jardeleza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 205623. August 10, 2016]

CONCHITA A. SONLEY, *petitioner, vs.* **ANCHOR SAVINGS BANK/EQUICOM SAVINGS BANK,** *respondent.*

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[50] *Barrientos v. Rapal, supra* note 27, at 447, citing *Spouses Samonte v. Century Savings Bank,* 620 Phil. 494, 503 (2003).

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; COMPROMISE; IF ONE OF THE PARTIES FAILS OR REFUSES TO ABIDE BY THE COMPROMISE, THE OTHER PARTY MAY EITHER ENFORCE THE COMPROMISE OR REGARD IT AS RESCINDED AND INSIST UPON HIS ORIGINAL DEMAND; NO ACTION FOR RESCISSION IS REQUIRED.— Under Article 2041 of the Civil Code, "(i)f one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand." "The language of this Article 2041 x x x denotes that no action for rescission is required x x x, and that the party aggrieved by the breach of a compromise agreement may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission thereof. He need not seek a judicial declaration of rescission, for he may 'regard' the compromise agreement already 'rescinded.'"

APPEARANCES OF COUNSEL

Vicente D. Millora for petitioner.
Equicom Savings Bank-Legal Department for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the Court of Appeals' August 28, 2012 Decision[2] and January 25, 2013 Resolution[3] denying herein petitioner Conchita A. Sonley's Urgent Motion for Reconsideration[4] in CA-G.R. SP No. 122409.

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[1] *Rollo*, pp. 9-29.

[2] *Id*. at 187-196; penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Michael P. Elbinias and Nina G. Antonio-Valenzuela.

[3] *Id*. at 212-213.

[4] *Id*. at 197-210.

Factual Antecedents

The facts, as succinctly narrated by the Court of Appeals (CA), are as follows:

The instant case arose when, on March 13, 2009, the petitioner[5] filed a Complaint[6] for declaration of nullity of rescission of contract and damages in the trial court[7] against x x x Anchor Savings Bank ("Anchor"), a thrift banking institution organized and existing under the laws of the Philippines [whose] business name x x x was [later] changed to Equicom Savings Bank x x x

In the said complaint, petitioner alleged that, on January 28, 2005, she agreed to purchase a real property from [Anchor] for the sum of x x x Php2,200,000.00 x x x. The said real property pertained to a parcel of land that had been foreclosed by [Anchor] with an area of x x x 126.50 square meters x x x located at Fairview, Quezon City ("subject property"). Pursuant to the said agreement, the parties entered into a Contract to Sell[8] whereby the petitioner agreed to pay the amount of x x x Php200,000.00 x x x as downpayment x x x with the balance of x x x Php2,000,000.00 x x x payable in sixty (60) monthly installments amounting to x x x Php47,580.00 x x x.

Petitioner, however, defaulted in paying her monthly obligations x x x which prompted [Anchor] to rescind the contract to sell x x x. In filing the complaint x x x petitioner averred that the rescission of the contract to sell was null and void because she had already substantially paid her obligation to the bank.

In its Answer[,][9][Anchor] denied the allegations that were made by the petitioner in her complaint. On the contrary, it contended that the post-dated checks which were issued by the petitioner in its favor covering the monthly installments for the purchase of the subject property were all dishonored by the drawee bank when they were

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[5] Herein petitioner.

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

[7] Regional Trial Court of Makati City, Branch 148. The case was docketed as Civil Case No. 09-217.

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

[9] *Id*. at 62-75.

presented for payment. Thus, [Anchor] averred that petitioner should not be allowed to benefit from her own fault and prevent [Anchor] from exercising its right to rescind their contract to sell.

Subsequently, after the issuance of a Pre-Trial Order by the trial court, the parties agreed to an amicable settlement and entered into a Compromise Agreement.[10] On the basis thereof, the trial court rendered a Judgment[11] x x x on August 16, 2010 whereby the petitioner agreed to repurchase the subject property from [Anchor] for the amount of x x x Php1,469,460.66 x x x plus x x x 12% x x x interest per annum.

However, [Anchor] later on filed a Manifestation and Motion for Execution[12] in the trial court claiming that petitioner had not been paying the agreed monthly installments in accordance with the compromise agreement. Moreover, it averred that all the checks which the petitioner issued to pay her obligations were again dishonored. Thus, [Anchor] prayed that a writ of execution be issued by the trial court in its favor ordering: (1) that the contract to sell that was entered into between the parties be rescinded; (2) that [Anchor] be allowed to apply all the payments that were made to it by the petitioner as rentals; and (3) that petitioner immediately vacate the subject property.

Consequently, on September 8, 2011, the trial court issued the assailed order[13] the dispositive portion of which states:

> 'WHEREFORE, premises considered, the '*Manifestation and Motion for Execution*' is hereby GRANTED.
>
> Consequently, the Judgment dated August 16, 2010 should be entered in the Book of Entries of Judgment as final and

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[10] *Id*. at 102-105.

[11] *Id*. at 16, 227. The dispositive portion of said judgment states:

WHEREFORE, premises considered, judgment is hereby rendered in accordance with the terms and conditions set forth in the compromise agreement, which is hereby APPROVED, and the parties are hereby ordered to strictly comply with the terms and conditions thereof.

This judgment is immediately FINAL and EXECUTORY.

[12] *Id*. at 108-110.

[13] *Id*. at 181-183; should be "Amended Order."

executory. Accordingly, let a writ of execution be issued and the Deputy Sheriff of this Court is hereby ordered to implement the same.

SO ORDERED.'

In arriving at the said ruling, the trial court ratiocinated as follows:

'In view of the foregoing and for failure of the plaintiff to comply with the terms and conditions of the Compromise Agreement and since said Judgment itself provides that the same shall be immediately final and executory, the Decision dated August 16, 2010 is hereby reiterated as final and executory and should now be entered in the Book of Entries and Judgment. Accordingly, a writ of execution should now be issued to implement the aforesaid Judgment in consonance with the Compromise Agreement and in line with Rule 39 Section 1 of the Rules of Court, to wit:

'Section 1. Execution upon judgments or final orders. – Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.'[14]

Ruling of the Court of Appeals

Petitioner filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 122409, claiming that the trial court committed grave abuse of discretion in issuing a writ of execution, since there is nothing in the trial court's August 16, 2010 judgment which authorizes the issuance of such a writ in case the parties fail to perform the obligations stated under the Compromise Agreement.

In its assailed August 28, 2012 Decision, however, the CA ruled against the petitioner, pronouncing thus:

In sum, the sole issue to be resolved by us in this case is whether or not the trial court may issue a writ of execution against the petitioner

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[14] *Id.* at 188-190.

despite the fact that the issuance thereof was not specifically provided for in the judgment which it rendered based on compromise agreement. After a careful and judicious scrutiny of the whole matter, together with the applicable laws and jurisprudence in the premises, we find the instant petition to be bereft of merit.

A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced. Like any other contract, a compromise agreement must comply with the requisites in Article 1318 of the Civil Code, to wit: (a) consent of the contracting parties; (b) object certain that is the subject matter of the contract; and (c) cause of the obligation that is established. Like any other contract, the terms and conditions of a compromise agreement must not be contrary to law, morals, good customs, public policy and public order. x x x

Corollary thereto, once submitted to the court and stamped with judicial approval, a compromise agreement becomes more than a mere private contract binding upon the parties. Having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any judgment.

In the case at bench, the petitioner pointed out that the issuance of a writ of execution was not warranted and had no legal basis under the judgment based on compromise agreement that was rendered by the trial court. In support of her argument, petitioner relied on paragraph (c) of the said agreement which provides as follows:

> '(c) Penalty. In case of failure of the plaintiff to pay, for any reason whatsoever, the amount provided in the Schedule of Payment, the plaintiff hereby agrees to pay, in addition to, and separate from, the interest rate agreed upon, a penalty charge of FIVE PERCENT (5%) per month or a fraction thereof, based on unpaid installments computed from due date until fully paid. This shall be without prejudice to the right of the defendant to rescind this Compromise Agreement as provided under the 'Contract to Sell' dated 21 December 2007 upon compliance with the requirements provided for under the law.'

Petitioner insisted that, pursuant to the foregoing stipulation, [Anchor] was only entitled to an additional penalty charge of five percent (5%) per month in case she failed to pay her monthly obligations. Thus, she posited that the trial court committed grave abuse of discretion when it issued a writ of execution against her

when she defaulted in her payment because the terms of their compromise agreement did not provide for the said remedy.

The foregoing contentions adduced by the petitioner are untenable and devoid of merit. True, the compromise agreement between the parties stated that, in case of the petitioner's failure to pay her obligation, she agreed to pay interests and penalties [sic] charges. However, paragraph (c) of the compromise agreement likewise provided that petitioner's payment of the additional interests and charges 'shall be without prejudice to the right of the defendant to rescind this Compromise Agreement as provided under the 'Contract to Sell' dated 21 December 2007.' On this note, it bears stressing that the pertinent portions of the contract to sell read as follows:

'RESCISSION OF CONTRACT

'**The failure of the BUYER to pay on due date any monthly installment** in accordance with the Schedule of Payment provided in Paragraph 2 – Manner of Payment, or if, at any time, the SELLER is of the opinion that the BUYER would be unable to pay or meet his obligations under this Contract or in case the BUYER was declared in default by any other creditor, **then the SELLER shall be entitled, as a matter of right, to rescind the Contract.**'

'FORFEITURE OF PAYMENTS

'**As a consequence of the rescission of this Contract pursuant to Paragraph 5 above, any and/or all payments made by the BUYER under this Contract shall be deemed forfeited in favour of the SELLER and shall be applied as rentals for the use and occupancy of the PROPERTY** and/or as and by way of liquidated damages and indemnification for opportunity loss and/or other losses, the BUYER hereby acknowledging and confirming that the SELLER was deprived of the opportunity to offer the PROPERTY for sale to other interested parties or dispose thereof in such manner as it deems necessary or appropriate during the existence of this Contract.'

Considering the aforequoted stipulations in the compromise agreement and the contract to sell, this Court does not find any merit in the claim of the petitioner that [Anchor] could not avail of the remedy of rescission in case of default in payment by the petitioner. On the contrary, the intent of the contracting parties was clearly

embodied in the compromise agreement when the said agreement stated that the petitioner should pay additional charges should she default in the payment of her obligations x x x. The payment of said additional amounts, however, shall be without prejudice to [Anchor's] right to rescind the contract to sell and consider the payments that were already made by the petitioner as rentals for her use and occupation of the subject property.

Verily, it is a settled rule that a compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. Hence, a decision on a compromise agreement is final and executory and it has the force of law and is conclusive between the parties. It transcends its identity as a mere contract binding only upon the parties thereto as it becomes a judgment that is subject to execution in accordance with the Rules of Court. In this regard, Article 2041 of the Civil Code explicitly provides that, if one of the parties fails or refuses to abide by the compromise agreement, the other party may either enforce the compromise or regard it as rescinded and insist upon his or her original demand.

At this point, it bears stressing that a petition for *certiorari* against a court which has jurisdiction over a case will prosper only if grave abuse of discretion is manifested. The burden is on the part of the petitioner to prove not merely reversible error but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the [court] issuing the impugned order. Mere abuse of discretion is not enough; it must be grave. x x x

Here, there is a paucity of circumstance which would persuade us to grant the instant petition. There was no hint of whimsicality nor gross and patent abuse of discretion as would amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law when the trial court issued the assailed order and issued a writ of execution against herein petitioner who voluntarily and freely signed the compromise agreement and thereafter became bound by the terms and conditions that were embodied therein.

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the petition filed in this case for lack of merit. The Order dated September 8, 2011 issued by Branch 148 of the Regional Trial Court of the National Capital Judicial Region in Makati City dated September 8, 2011 [sic] in Civil Case No. 09-217 is **AFFIRMED**.

SO ORDERED.[15]

In short, the CA held that petitioner's failure to abide by the terms and conditions of the Compromise Agreement, which had the force and effect of a final and executory judgment when it was approved by the trial court in its August 16, 2010 Judgment, authorized the enforcement thereof by execution, and thus the trial court may not be faulted for granting respondent's motion for execution and directing the issuance of the corresponding writ.

Petitioner moved to reconsider, but in its assailed January 25, 2013 Resolution, the CA remained unconvinced. Hence, the present Petition.

In an August 20, 2014 Resolution,[16] this Court resolved to give due course to the Petition.

Issue

In essence, petitioner reiterates her contention before the CA that the trial court had no power to issue a writ of execution in Civil Case No. 09-217 as the issuance thereof was not authorized and specifically provided for in its August 16, 2010 Judgment.

Petitioner's Arguments

Praying that the assailed CA dispositions be voided, reversed, and set aside, petitioner argues that respondent is not entitled to execution as the Compromise Agreement does not specifically provide that in case of default, a writ of execution may issue; that the only remedies available to respondent are to charge penalties and/or rescind the agreement as provided for under the Contract to Sell; and that before a writ of execution may issue, respondent must first institute an action for rescission and secure a judicial declaration that the Contract to Sell is rescinded, which was not done in this case.

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[15] *Id*. at 191-195.

[16] *Id*. at 240-241.

Respondent's Arguments

In its Comment,[17] respondent counters that since petitioner admits that she is in default and thus violated the terms of the Compromise Agreement, rescission should follow as a matter of course as authorized and provided for in said agreement and the Contract to Sell; that the trial court's approval of the Compromise Agreement is a final act that forms part and parcel of the judgment which may be enforced by a writ of execution;[18] that since the Compromise Agreement itself provides the power to rescind, it follows that any rescission done pursuant thereto is enforceable by execution without need of a separate action; and that since petitioner failed to prove the presence of grave abuse of discretion, the CA is correct in dismissing her Petition for *Certiorari*.

Our Ruling

The Petition must be denied.

Under Article 2041 of the Civil Code, "(i)f one of the parties fails or refuses to abide by the compromise, the other party may either enforce the compromise or regard it as rescinded and insist upon his original demand." "The language of this Article 2041 x x x denotes that no action for rescission is required x x x, and that the party aggrieved by the breach of a compromise agreement may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission thereof. He need not seek a judicial declaration of rescission, for he may 'regard' the compromise agreement already 'rescinded.'"[19] This principle was reiterated in a subsequent case, thus:

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[17] *Id.* at 225-236.

[18] Citing *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, 370 Phil. 150 (1999).

[19] *Leonor v. Sycip*, 111 Phil. 859, 865 (1961).

In the case of *Leonor v. Sycip*, the Supreme Court (SC) had the occasion to explain this provision of law. It ruled that Article 2041 does not require an action for rescission, and the aggrieved party, by the breach of compromise agreement, may just consider it already rescinded, to wit:

> It is worthy of notice, in this connection, that, unlike Article 2039 of the same Code, which speaks of "a cause of annulment or rescission of the compromise" and provides that "the compromise may be annulled or rescinded" for the cause therein specified, thus suggesting an action for annulment or rescission, said Article 2041 confers upon the party concerned, not a "cause" for rescission, or the right to "demand" the rescission of a compromise, but the authority, not only to "regard it as rescinded", but, also, to "insist upon his original demand." **The language of this Article 2041, particularly when contrasted with that of Article 2039, denotes that no action for rescission is required in said Article 2041, and that the party aggrieved by the breach of a compromise agreement may, if he chooses, bring the suit contemplated or involved in his original demand, as if there had never been any compromise agreement, without bringing an action for rescission thereof. He need not seek a judicial declaration of rescission, for he may "regard" the compromise agreement already "rescinded."**[20]

The parties' Compromise Agreement states that –

(c) Penalty. In case of failure of the plaintiff to pay, for any reason whatsoever, the amount provided in the Schedule of Payment, the plaintiff hereby agrees to pay, in addition to, and separate from, the interest rate agreed upon, a penalty charge of FIVE PERCENT (5%) per month or a fraction thereof, based on unpaid installments computed from due date until fully paid. **This shall be without prejudice to the right of the defendant to rescind this Compromise Agreement as provided under the "Contract to Sell" dated 21 December 2007** upon compliance with the requirements provided for under the law. (Emphasis supplied)

The Contract to Sell provides, on the other hand, that –

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[20] *Miguel v. Montanez*, 680 Phil. 356, 364-365 (2012).

The failure of the BUYER to pay on due date any monthly installment in accordance with the Schedule of Payment provided in Paragraph 2 – Manner of Payment, or if, at any time, the SELLER is of the opinion that the BUYER would be unable to pay or meet his obligations under this Contract or in case the BUYER was declared in default by any other creditor, **then the SELLER shall be entitled, as a matter of right, to rescind this Contract**. (Emphasis supplied)

While the assailed dispositions of the trial court and the CA do not specify the remedies that respondent is entitled to, it is clear that rescission and eviction were specifically sought and prayed for in respondent's Manifestation and Motion for Execution, and petitioner was given the opportunity to oppose the same. In her Opposition to the Motion for Execution,[21] she in fact acknowledged and admitted that she was in default and that she violated the Compromise Agreement by her failure to make regular payments as required therein. Indeed, it may be said that respondent's motion for execution, with a prayer for rescission, for the application of petitioner's payments as rental, and for her eviction, constituted sufficient written notice to petitioner, and it was duly heard; petitioner opposed the motion and even filed a rejoinder[22] to respondent's reply,[23] but she could not proffer any defense; quite the opposite, she openly admitted liability. The facts, evidence, and pleadings are clear and within the cognizance of the trial court; petitioner's failure to abide by the agreement should result in execution, cancellation and rescission of the Compromise Agreement and Contract to Sell, and her eviction from the property.

Certainly, a compromise agreement becomes the law between the parties and will not be set aside other than [sic] the grounds mentioned above. In *Ramnani v. Court of Appeals*, we held that the main purpose of a compromise agreement is to put an end to litigation because of the uncertainty that may arise from it. Once the compromise is

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[21] *Rollo*, pp. 111-115.

[22] *Id.* at 124-126.

[23] *Id.* at 119-123.

perfected, the parties are bound to abide by it in good faith. Should a party fail or refuse to comply with the terms of a compromise or amicable settlement, the other party could either enforce the compromise by a writ of execution or regard it as rescinded and so insist upon his/her original demand.[24]

Petitioner may be right in arguing that respondent has the option to proceed with the sale and charge corresponding penalties instead, pursuant to the stipulations in the Contract to Sell; however, respondent chose to rescind the same, an option which it is equally entitled to by contract and under the law,[25] and thus evict petitioner from the premises. Respondent must have thought that if past actions were a gauge, petitioner was no longer in a position to honor her obligations under the Contract to Sell.

Respondent's claim is straightforward: it seeks rescission and eviction, with whatever amount paid by petitioner to be applied as rental for the use and occupation of the subject property as agreed upon. Going by what is on record, it would appear that petitioner paid the total amount of ₱497,412.76,[26] while she has been occupying the property, a 126.5-square meter parcel of land with improvements thereon located at Timex Street, West Fairview, Quezon City, as her residence since 2007.[27] In effect, petitioner would have paid a measly sum as aggregate rent for her stay therein, which is more than just for her.

WHEREFORE, the Petition is **DENIED**. The August 28, 2012 Decision and January 25, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 122409 are **AFFIRMED**. The parties' Compromise Agreement and Contract to Sell dated December 21, 2007 are **RESCINDED**. Petitioner Conchita A.

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[24] *Clark Development Corporation v. Mondragon Leisure and Resorts Corporation*, 546 Phil. 34, 52 (2007).

[25] CIVIL CODE, Article 2041.

[26] *Rollo*, pp. 119-120.

[27] *Id*. at 32, 43, 46, 59.

Sonley is ordered to immediately **VACATE** the subject property and premises and **SURRENDER** the same to respondent Anchor Savings Bank/Equicom Savings Bank.

SO ORDERED.

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

Brion, J., on leave.

Mendoza, J., on official leave.

THIRD DIVISION

[G.R. No. 212530. August 10, 2016]

BLOOMBERRY RESORTS AND HOTELS, INC., *petitioner, vs.* **BUREAU OF INTERNAL REVENUE, REPRESENTED BY COMMISSIONER KIM S. JACINTO-HENARES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE COURT BY PREROGATIVE TAKES COGNIZANCE OF THE CASE QUESTIONING THE VALIDITY OF THE SUBJECT REVENUE MEMORANDUM CIRCULAR.— [In] questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its

immediate recourse (*i.e.*, pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.

2. TAXATION; TAX EXEMPTION UNDER PAGCOR'S CHARTER (PD 1869) REMAINS IN EFFECT DESPITE AMENDMENTS TO THE NIRC OF 1997; INCOME DERIVED BY PAGCOR FROM ITS GAMING OPERATIONS IS SUBJECT ONLY TO 5% FRANCHISE TAX, IN LIEU OF ALL OTHER TAXES, INCLUDING CORPORATE INCOME TAX; PRIVILEGE INURES TO THE BENEFIT OF ITS CONTRACTEES AND LICENSEES. — [In] *PAGCOR v. The Bureau of Internal Revenue, et al.*, x x x [t]he Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. Thus, income derived by PAGCOR from its *gaming operations* such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. The Court concluded that the **CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision dated 15 March 2011 without due process, which creates additional burden upon PAGCOR.** x x x [W]hether or not PAGCOR's tax privilege of paying only the 5% franchise tax *in lieu* of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, x x x the PAGCOR Charter states in

unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Rules on Court seeking: (a) to annul the issuance by the Commissioner of Internal Revenue (CIR) of an alleged unlawful governmental regulation, specifically the provision of Revenue Memorandum Circular (RMC) No. 33-2013[1] dated 17 April 2013 subjecting *contractees and licensees* of the Philippine Amusement and Gaming Corporation (PAGCOR) to income tax under the National Internal Revenue Code (NIRC) of 1997, as amended; and (b) to enjoin respondent CIR from implementing the assailed provision of RMC No. 33-2013.[2]

The Facts

As narrated in the present petition, the factual antecedents of the case reveal that, on 8 April 2009, PAGCOR granted to

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[1] *Rollo*, pp. 32-34.

[2] *Id*. at 4.

petitioner a provisional license to establish and operate an integrated resort and casino complex at the Entertainment City project site of PAGCOR. Petitioner and its parent company, Sureste Properties, Inc., own and operate Solaire Resort & Casino. Thus, being one of its licensees, petitioner only pays PAGCOR license fees, *in lieu* of all taxes, as contained in its provisional license and consistent with the PAGCOR Charter or Presidential Decree (PD) No. 1869,[3] which provides the exemption from taxes of persons or entities contracting with PAGCOR in casino operations.

However, when Republic Act (R.A.) No. 9337 took effect,[4] it amended Section 27(C) of the NIRC of 1997, which excluded PAGCOR from the enumeration of government-owned or controlled corporations (GOCCs) exempt from paying corporate income tax. The enactment of the law led to the case of *PAGCOR v. The Bureau of Internal Revenue, et al.*,[5] where PAGCOR questioned the validity or constitutionality of R.A. No. 9337 removing its exemption from paying corporate income tax, and therefore alleging the same to be void for being repugnant to the equal protection and the non-impairment clauses embodied in the 1987 Philippine Constitution. Subsequently, the Court articulated that Section 1 of RA No. 9337, amending Section 27(C) of the NIRC of 1997, which removed PAGCOR's exemption from corporate income tax, was indeed valid and constitutional.

Consequently, in implementing the aforesaid amendments made by R.A. No. 9337, respondent issued RMC No. 33-2013 dated 17 April 2013 declaring that PAGCOR, in addition to the five percent (5%) franchise tax of its gross revenue under Section 13(2)(a) of PD No. 1869, is now subject to corporate

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[3] As amended by Republic Act No. 9487 also known as "AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 1869, OTHERWISE KNOWN AS PAGCOR CHARTER," duly approved on 20 June 2007.

[4] 1 November 2005.

[5] 660 Phil. 636 (2011).

income tax under the NIRC of 1997, as amended. In addition, a provision therein states that PAGCOR's *contractees and licensees*, being entities duly authorized and licensed by it to perform gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, are likewise subject to income tax under the NIRC of 1997, as amended.

Aggrieved, as it now being considered liable to pay corporate income tax in addition to the 5% franchise tax, petitioner immediately elevated the matter through a petition for *certiorari* and prohibition before this Court asserting the following arguments: (i) PD No. 1869, as amended by R.A. No. 9487, is an existing valid law, and expressly and clearly exempts the *contractees and licensees* of PAGCOR from the payment of all kinds of taxes except the 5% franchise tax on its gross gaming revenue; (ii) This clear exemption from taxes of PAGCOR's contracting parties under Section 13(2)(b) of PD No. 1869, as amended by R.A. No. 9487, was not repealed by the deletion of PAGCOR in the list of tax-exempt entities under the NIRC; (iii) Respondent CIR acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction when she issued the assailed provision in RMC No. 33-2013 which, in effect, repealed or amended PD No. 1869; and (iv) Respondent CIR, in issuing the assailed provision in RMC No. 33-2013, will adversely affect an industry which seeks to create income for the government, promote tourism and generate jobs for the Filipino people.[6]

To rationalize its direct recourse before this Court, petitioner submits the following justification:

(a) What is involved is a pure question of law, *i.e.* whether or not petitioner is exempted from payment of all taxes, national or local, except the 5% franchise tax by virtue of Section 13(2)(b) of PD No. 1869, as amended;

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[6] *Rollo*, pp. 15-24.

(b) The rule on exhaustion of administrative remedies is disregarded, among others, when: (i) the administrative action is patently illegal amounting to lack or excess of jurisdiction; (ii) to require exhaustion of administrative remedies would be unreasonable; and (iii) it would amount to nullification of a claim;

(c) The gaming business funded by private investors under license by PAGCOR is a new industry which involves national interest. Hence, the inclusion of the assailed provision in RMC No. 33-2013 which implements income taxes on PAGCOR's licensees and operators when an exemption for such is specifically provided for by PD No. 1869, as amended, being unlawful and unwarranted legislation by the respondent, seriously affects national interest as it effectively curtails the basis for the investments in the industry and resulting tourist interest and jobs generated by the industry; and

(d) The assailed provision of RMC No. 33-2013 affects not only petitioner or other locators and PAGCOR licensees in Entertainment City, Parañaque City, but also the rest of private casinos licensed by PAGCOR operating in economic zones. Thus, in order to prevent multiplicity of suits and to avoid a situation when different local courts issue differing opinions on one question of law, direct recourse to this Court is likewise sought.[7]

It is the contention of petitioner that although Section 4 of the NIRC of 1997, as amended, gives respondent CIR the power to interpret the provisions of tax laws through administrative issuances, she cannot, in the exercise of such power, issue administrative rulings or circulars not consistent with the law sought to be applied since administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Since the assailed provision

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[7] *Id*. at 5-11.

in RMC No. 33-2013 subjecting the *contractees and licensees* of PAGCOR to income tax under the NIRC of 1997, as amended, contravenes the provision of the PAGCOR Charter granting tax exemptions to corporations, associations, agencies, or individuals with whom PAGCOR has any contractual relationship in connection with the operations of the casinos authorized to be conducted under the PAGCOR Charter, it is petitioner's position that the assailed provision was issued by respondent CIR with grave abuse of discretion amounting to lack or excess of jurisdiction.

Respondent, in her Comment filed on 18 December 2014,[8] counters that there was no grave abuse of discretion on her part when she issued the subject revenue memorandum circular since it did not alter, modify or amend the intent and meaning of Section 13(2)(b) of PD No. 1869, as amended, insofar as the imposition is concerned, considering that it merely clarified the taxability of PAGCOR and its *contractees and licensees* for income tax purposes as well as other franchise grantees similarly situated under prevailing laws; that prohibition will not lie to restrain a purely administrative act, nor enjoin acts already done, being a preventive remedy; and that tax exemptions are strictly construed against the taxpayer.

The Issues

Hence, we are now presented with the following issues for our consideration and resolution: (i) whether or not the assailed provision of RMC No. 33-2013 subjecting the *contractees and licensees* of PAGCOR to income tax under the NIRC of 1997, as amended, was issued by respondent CIR with grave abuse of discretion amounting to lack or excess of jurisdiction; and (ii) whether or not said provision is valid or constitutional considering that Section 13(2)(b) of PD No. 1869, as amended (PAGCOR Charter), grants tax exemptions to such *contractees and licensees*.

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[8] *Id*. at 94-106.

Our Ruling

At the outset, although it is true that direct recourse before this Court is occasionally allowed in exceptional cases without strict observance of the rules on hierarchy of courts and on exhaustion of administrative remedies, we find the imperious need to first determine whether or not this case falls within the said exceptions, before we delve into the merits of the instant petition.

We thus find need to look back at the dispositions rendered in *Asia International Auctioneers, Inc., et al. v. Parayno, Jr.*,[9] wherein we ruled that revenue memorandum circulars[10] are considered administrative *rulings* issued from time to time by the CIR. It has been explained that these are actually rulings or opinions of the CIR issued pursuant to her power under Section 4[11] of the NIRC of 1997, as amended, to make rulings or opinions in connection with the implementation of the provisions of internal revenue laws, including ruling on the classification of articles of sales and similar purposes. Therefore,

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[9] 565 Phil. 255, 269-270 (2007).

[10] Revenue Memorandum Circulars (RMC) – These issuances shall disseminate and embody pertinent and applicable portions, as well as amplifications of the rules, precedents, laws, regulations, opinions and other orders and directives issued by or administered by the Commissioner of Internal Revenue, and by offices and agencies other than the Bureau of Internal Revenue, for the information, guidance or compliance of revenue personnel [paragraph (f), Revenue Administrative Order No. 2-2001 issued on 22 October 2001].

[11] Section 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases*. – **The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.**

The power to decide disputed assessment, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or **other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.** (Emphasis supplied)

it was held that under R.A. No. 1125,[12] which was thereafter amended by RA No. 9282,[13] such rulings of the CIR (including revenue memorandum circulars) are appealable to the Court of Tax Appeals (CTA), and not to any other courts.

In the same case, we further declared that "failure to ask the CIR for a reconsideration of the assailed revenue regulations and RMCs is another reason why a case directly filed before us should be dismissed. It is settled that the premature invocation of the court's intervention is fatal to one's cause of action. If a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must first be exhausted before the court's power of judicial review can be sought. The party with an administrative remedy must not only initiate the prescribed administrative procedure to obtain relief but also to pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter itself correctly and prevent unnecessary and premature resort to the court."[14]

Then, in *The Philippine American Life and General Insurance Company v. Secretary of Finance*,[15] we had the occasion to

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[12] "AN ACT CREATING THE COURT OF TAX APPEALS" which took effect on 16 June 1954.

[13] "AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO.1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES" which took effect on 23 April 2004. This Act was a consolidation of S. No. 2712 and H. No. 6673 finally passed by the Senate and the House of Representatives on 8 December 2003 and 2 February 2004, respectively.

[14] *Supra* note 9 at 270-271.

[15] G.R. No. 210987, 24 November 2014, 741 SCRA 578.

elucidate that the CIR's power to interpret the provisions of the Tax Code and other tax laws is subject to the review by the Secretary of Finance; and thereafter, the latter's ruling may be appealed to the CTA, having the technical knowledge over the subject controversies. Also, the Court held that "the power of the CTA includes that of determining whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the [regional trial court] in issuing an interlocutory order in cases falling within the exclusive appellate jurisdiction of the tax court. It, thus, follows that the CTA, by constitutional mandate, is vested with jurisdiction to issue writs of certiorari in these cases."[16] Stated differently, the CTA "can now rule not only on the propriety of an assessment or tax treatment of a certain transaction, but also on the validity of the revenue regulation or revenue memorandum circular on which the said assessment is based."[17]

From the foregoing jurisprudential pronouncements, it would appear that in questioning the validity of the subject revenue memorandum circular, petitioner should not have resorted directly before this Court considering that it appears to have failed to comply with the doctrine of exhaustion of administrative remedies and the rule on hierarchy of courts, a clear indication that the case was not yet ripe for judicial remedy. Notably, however, in addition to the justifiable grounds relied upon by petitioner for its immediate recourse (*i.e.* pure question of law, patently illegal act by the BIR, national interest, and prevention of multiplicity of suits), we intend to avail of our jurisdictional prerogative in order not to further delay the disposition of the issues at hand, and also to promote the vital interest of substantial justice. To add, in recent years, this Court has consistently acted on direct actions assailing the validity of various revenue regulations, revenue memorandum circulars, and the likes, issued by the CIR. The position we now take is more in accord with

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[16] *Id.* at 599-600 citing *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, 4 February 2014, 715 SCRA 182, 202. (Emphasis and underlining omitted)

[17] *Id.* at 600.

latest jurisprudence. Upon the exercise of this prerogative, we are ushered into the merits of the case.

The determination of the submissions of petitioner will have to follow the pilot case of *PAGCOR v. The Bureau of Internal Revenue, et al.*,[18] where this Court clarified its earlier ruling in G.R. No. 172087[19] involving the same parties, and expressed that: (i) Section 1 of RA No. 9337, amending Section 27(C) of the NIRC of 1997, as amended, which excluded PAGCOR from the enumeration of GOCCs exempted from corporate income tax, is valid and constitutional; (ii) PAGCOR's tax privilege of paying five percent (5%) franchise tax *in lieu* of all other taxes with respect to its income from gaming operations is not repealed or amended by Section 1(c) of R.A. No. 9337; (iii) PAGCOR's income from gaming operations is subject to the 5% franchise tax only; and (iv) PAGCOR's income from other related services is subject to corporate income tax only.

The Court sitting En Banc expounded on the matter in this wise:

> After a thorough study of the arguments and points raised by the parties, and in accordance with our Decision dated March 15, 2011, we sustain [PAGCOR's] contention that its **income from gaming operations is subject only to five percent (5%) franchise tax under P.D. No. 1869, as amended,** while its income from other related services is subject to corporate income tax pursuant to P.D. No. 1869, as amended, as well as R.A. No. 9337. This is demonstrable.
>
> ***First***. Under P.D. No. 1869, as amended, [PAGCOR] is subject to income tax only with respect to its operation of related services. Accordingly, the income tax exemption ordained under Section 27(c) of R.A. No. 8424 clearly pertains only to [PAGCOR's] income from operation of related services. **Such income tax exemption could not have been applicable to [PAGCOR's] income from gaming operations as it is already exempt therefrom under P.D. No. 1869, as amended**, to wit:

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[18] G.R. No. 215427, 10 December 2014, 744 SCRA 712.

[19] *PAGCOR v. The Bureau of Internal Revenue, et al.*, *supra* note 5.

> SECTION 13. Exemptions. –
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> x x x x x x x x x
>
> (2) Income and other taxes. — (a) Franchise Holder: ***No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.*** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

Indeed, the grant of tax exemption or the withdrawal thereof assumes that the person or entity involved is subject to tax. This is the most sound and logical interpretation because [PAGCOR] could not have been exempted from paying taxes which it was not liable to pay in the first place. **This is clear from the wordings of P.D. No. 1869, as amended, imposing a franchise tax of five percent (5%) on its gross revenue or earnings derived by [PAGCOR] from its operation under the Franchise *in lieu* of all taxes of any kind or form, as well as fees, charges or levies of whatever nature, which necessarily include corporate income tax**.

In other words, **there was no need for Congress to grant tax exemption to [PAGCOR] with respect to its income from gaming operations as the same is already exempted from all taxes of any kind or form, income or otherwise, whether national or local, under its Charter, save only for the five percent (5%) franchise tax. The exemption attached to the income from gaming operations exists independently from the enactment of R.A. No. 8424**. To adopt an assumption otherwise would be downright ridiculous, if not deleterious, since [PAGCOR] would be in a worse position if the exemption was granted (then withdrawn) than when it was not granted at all in the first place.[20] (Emphasis supplied)

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[20] *PAGCOR v. The Bureau of Internal Revenue, et al., supra* note 18 at 724-725.

Furthermore,

Second. Every effort must be exerted to avoid a conflict between statutes; so that if reasonable construction is possible, the laws must be reconciled in the manner.

As we see it, there is no conflict between P.D. No. 1869, as amended, and R.A. No. 9337. The former lays down the taxes imposable upon [PAGCOR], as follows: (1) *a five percent (5%) franchise tax* of the gross revenues or earnings derived from its operations conducted under the Franchise, which shall be due and payable *in lieu* of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial or national government authority; and (2) *income tax* for income realized from other necessary and related services, shows and entertainment of [PAGCOR]. **With the enactment of R.A. No. 9337, which withdrew the income tax exemption under R.A. No. 8424, [PAGCOR's] tax liability on income from other related services was merely reinstated**.

It cannot be gainsaid, therefore, that the nature of taxes imposable is well defined for each kind of activity or operation. There is no inconsistency between the statutes; and in fact, they complement each other.

Third. Even assuming that an inconsistency exists, P.D. No. 1869, as amended, which expressly provides the tax treatment of [PAGCOR's] income prevails over R.A. No. 9337, which is a general law. **It is a canon of statutory construction that a special law prevails over a general law — regardless of their dates of passage — and the special is to be considered as remaining an exception to the general**. x x x

x x x x x x x x x

Where a general law is enacted to regulate an industry, it is common for individual franchises subsequently granted to restate the rights and privileges already mentioned in the general law, or to amend the later law, as may be needed, to conform to the general law. However, if no provision or amendment is stated in the franchise to effect the provisions of the general law, it cannot be said that the same is the intent of the lawmakers, for repeal of laws by implication is not favored.

In this regard, **we agree with [PAGCOR] that if the lawmakers had intended to withdraw [PAGCOR's] tax exemption of its**

gaming income, then Section 13(2)(a) of P.D. 1869 should have been amended expressly in R.A. No. 9487, or the same, at the very least, should have been mentioned in the repealing clause of R.A. No. 9337. However, the repealing clause never mentioned [PAGCOR's] Charter as one of the laws being repealed. On the other hand, the repeal of other special laws, namely, Section 13 of R.A. No. 6395 as well as Section 6, fifth paragraph of R.A. No. 9136, is categorically provided under Section 24(a) (b) of R.A. No. 9337, x x x.

x x x x x x x x x

When [PAGCOR's] franchise was extended on June 20, 2007 without revoking or withdrawing its tax exemption, it effectively reinstated and reiterated all of [PAGCOR's] rights, privileges and authority granted under its Charter. Otherwise, Congress would have painstakingly enumerated the rights and privileges that it wants to withdraw, given that a franchise is a legislative grant of a special privilege to a person. **Thus, the extension of [PAGCOR's] franchise under the same terms and conditions means a continuation of its tax exempt status with respect to its income from gaming operations**. Moreover, all laws, rules and regulations, or parts thereof, which are inconsistent with the provisions of P.D. 1869, as amended, a special law, are considered repealed, amended and modified, consistent with Section 2 of R.A. No. 9487, thus:

> SECTION 2. *Repealing Clause.* – All laws, decrees, executive orders, proclamations, rules and regulations and other issuances, or parts thereof, which are inconsistent with the provisions of this Act, are hereby repealed, amended and modified.

It is settled that where a statute is susceptible of more than one interpretation, the court should adopt such reasonable and beneficial construction which will render the provision thereof operative and effective, as well as harmonious with each other.

Given that [PAGCOR's] Charter is not deemed repealed or amended by R.A. No. 9337, [PAGCOR's] income derived from gaming operations is subject only to the five percent (5%) franchise tax, in accordance with P.D. 1869, as amended. With respect to [PAGCOR's] income from operation of other related services, the same is subject to income tax only. The five percent (5%) franchise tax finds no application with respect to [PAGCOR's] income from

other related services, in view of the express provision of Section 14(5) of P.D. No. 1869, as amended, x x x.[21] (Emphasis supplied)

The Court through Justice Diosdado M. Peralta, categorically followed what was simply provided under the PAGCOR Charter (PD No. 1869, as amended by RA No. 9487), by proclaiming that despite amendments to the NIRC of 1997, the said Charter remains in effect. Thus, income derived by PAGCOR from its *gaming operations* such as the operation and licensing of gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools and related operations is subject only to 5% franchise tax, *in lieu* of all other taxes, including corporate income tax. The Court concluded that the **CIR committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued RMC No. 33-2013 subjecting both income from gaming operations and other related services to corporate income tax and 5% franchise tax considering that it unduly expands the Court's Decision dated 15 March 2011 without due process, which creates additional burden upon PAGCOR**.

Noticeably, however, the High Court in the abovementioned case intentionally did not rule on the issue of whether or not PAGCOR's tax privilege of paying only the 5% franchise tax *in lieu* of all other taxes inures to the benefit of third parties with contractual relationship with it in connection with the operation of casinos, such as petitioner herein. The Court sitting En Banc simply stated that:

> The resolution of the instant petition is limited to clarifying the tax treatment of [PAGCOR's] income *vis-a-vis* our Decision dated March 15, 2011. This Decision (dated 10 December 2014) is not meant to expand our original Decision (dated 15 March 2011) by delving into new issues involving [PAGCOR's] contractees and licensees. For one, the latter are not parties to the instant case, and may not therefore stand to benefit or bear the consequences if this resolution. For another, to answer the fourth issue raised by [PAGCOR] relative to its contractees and licensees would be downright premature

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[21] *Id.* at 726-729.

and iniquitous as the same would effectively countenance sidesteps to judicial process.[22]

Bearing in mind the parties involved and the similarities of the issues submitted in the present case, we are now presented with the prospect of finally resolving the confusion caused by the amendments introduced by RA No. 9337 to the NIRC of 1997, and the subsequent issuance of RMC No. 33-2013, affecting the tax regime not only of PAGCOR but also its *contractees and licensees* under the existing laws and prevailing jurisprudence.

Section 13 of PD No. 1869 evidently states that payment of the 5% franchise tax by PAGCOR and its *contractees and licensees* exempts them from payment of any other taxes, including corporate income tax, quoted hereunder for ready reference:

Sec. 13. *Exemptions*. –

x x x x x x x x x

(2) **Income and other taxes. — (a) Franchise Holder: No tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local, shall be assessed and collected under this Franchise from the Corporation; nor shall any form of tax or charge attach in any way to the earnings of the Corporation, except a Franchise Tax of five (5%) percent of the gross revenue or earnings derived by the Corporation from its operation under this Franchise.** Such tax shall be due and payable quarterly to the National Government and shall be in lieu of all kinds of taxes, levies, fees or assessments of any kind, nature or description, levied, established or collected by any municipal, provincial, or national government authority.

(b) Others: The exemptions herein granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or

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[22] *Id*. at 731.

individual(s) with whom the Corporation or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise and to those receiving compensation or other remuneration from the Corporation or operator as a result of essential facilities furnished and/or technical services rendered to the Corporation or operator. (Emphasis and underlining supplied)

As previously recognized, the above-quoted provision providing for the said exemption was neither amended nor repealed by any subsequent laws (*i.e.* Section 1 of R.A. No. 9337 which amended Section 27(C) of the NIRC of 1997); thus, it is still in effect. Guided by the doctrinal teachings in resolving the case at bench, it is without a doubt that, like PAGCOR, its *contractees and licensees* remain exempted from the payment of corporate income tax and other taxes since the law is clear that said exemption inures to their benefit.

We adhere to the cardinal rule in statutory construction that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. As has been our consistent ruling, where the law speaks in clear and categorical language, there is no occasion for interpretation; there is only room for application.[23]

As the PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, ***shall inure to the benefit of and extend to*** corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all *contractees and licensees* of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other

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[23] *Amores v. House of Representatives Electoral Tribunal, et al.*, 636 Phil. 600, 608 (2010) citing *Twin Ace Holdings Corporation v. Rufina and Company*, 523 Phil. 766, 777 (2006).

taxes, including corporate income tax realized from the operation of casinos.

For the same reasons that made us conclude in the 10 December 2014 Decision of the Court sitting En Banc in G.R. No. 215427 that PAGCOR is subject to corporate income tax for "other related services", we find it logical that its *contractees and licensees* shall likewise pay corporate income tax for income derived from such "related services."

Simply then, in this case, we adhere to the principle that since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.[24]

Plainly, too, upon payment of the 5% franchise tax, petitioner's income from its gaming operations of gambling casinos, gaming clubs and other similar recreation or amusement places, and gaming pools, defined within the purview of the aforesaid section, is not subject to corporate income tax.

WHEREFORE, the petition is **GRANTED**. Accordingly, respondent Bureau of Internal Revenue, represented by Commissioner Kim S. Jacinto-Henares is hereby **ORDERED** to **CEASE AND DESIST** from implementing Revenue Memorandum Circular No. 33-2013 insofar as it imposes corporate income tax on petitioner Bloomberry Resorts and Hotels, Inc.'s income derived from its gaming operations.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Jardeleza, JJ.,* concur.

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[24] *Padua v. People*, 581 Phil. 488, 501 (2008).

SECOND DIVISION

[G.R. No. 213157. August 10, 2016]

NATIONAL GRID CORPORATION OF THE PHILIPPINES, *petitioner, vs.* **OFELIA M. OLIVA, in her official capacity as the CITY TREASURER OF CEBU CITY,** *respondent.*

[G.R. No. 213558. August 10, 2016]

OFELIA M. OLIVA, in her official capacity as the CITY TREASURER OF CEBU CITY, *petitioner, vs.* **NATIONAL GRID CORPORATION OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. TAXATION; TAX LIABILITIES OF THE NATIONAL GRID CORPORATION OF THE PHILIPPINES (NGCP); "IN LIEU OF ALL TAXES" CLAUSE INCLUDES TAXES IMPOSED BY THE LOCAL GOVERNMENT ON PROPERTIES USED IN CONNECTION WITH NGCP'S FRANCHISE.— Prior to the enactment of Republic Act No. 9136 (RA 9136), or the Electric Power Industry Reform Act of 2001 (EPIRA), the NPC was responsible for the development, production, and transmission of electric power on a nationwide basis. x x x With the passage of EPIRA, National Transmission Corporation (TRANSCO) assumed NPC's transmission function. RA 9511, enacted on 1 December 2008, granted NGCP a legislative franchise as TRANSCO's concessionaire. x x x Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise." x x x Section 9 of RA 9511clearly stated that the NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise.

2. ID.; ID.; NGCP'S PAYMENT OF FRANCHISE TAX EXEMPTS IT FROM PAYMENT OF REAL PROPERTY

TAXES ON PROPERTIES USED IN CONNECTION WITH ITS FRANCHISE; PROPERTIES USED NOT IN CONNECTION WITH ITS FRANCHISE SHOULD BE ASSESSED BASED ON ACTUAL USE.— NGCP paid real property taxes on the subject properties for the years 2001 – 2009. From 2001 to 2008, the subject properties were under the control and supervision of NPC/TRANSCO. It was only in 2009 that NGCP took control of the subject properties. x x x NGCP [may] demand from NPC/TRANSCO the amount of taxes which redounded to its benefit. x x x The City Treasurer of Cebu City [however] should refund to NGCP any excess in its payment. x x x Section 9 of RA 9511 provides that NGCP shall pay "a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise." This franchise tax is "**in lieu of** income tax and **any and all taxes**, duties, fees and charges of any kind, nature or description levied, **established or collected by any authority whatsoever, local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and **on properties used in connection with its franchise**, **from which taxes**, duties and charges, **the Grantee is hereby expressly exempted.**" It is very clear that NGCP's payment of franchise tax exempts it from payment of real property taxes on properties used in connection with its franchise. However, NGCP's tax exempt status on real property due to the "in lieu of all taxes" clause is qualified: NGCP shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase "exclusive of this franchise" means that real estate, buildings, and personal property used in the exercise of the franchise are not subject to the same tax as other corporations. The CBAA should determine whether the subject properties are properties used in connection with NGCP's franchise. If the subject properties are used in connection with NGCP's franchise, then NGCP is exempt from paying real property taxes on the subject properties. If the subject properties are not used in connection with NGCP's franchise, then the assessment level should be based on actual use, in accordance with Section 218(a-c) of the Local Government Code.

APPEARANCES OF COUNSEL

Yangco Law Offices for petitioner NGCP.
Office of the Solicitor General for public respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 213157 is a petition for review,[1] filed by National Grid Corporation of the Philippines (NGCP) against Ofelia M. Oliva (City Treasurer Oliva), in her official capacity as the City Treasurer of Cebu City, assailing the Decision[2] promulgated on 13 November 2013 as well as the Resolution[3] promulgated on 23 June 2014 by the Court of Tax Appeals En Banc (CTA-EB) in CTA EB Case No. 849.

G.R. No. 213558 is a petition for review,[4] filed by Diwa B. Cuevas (OIC Cuevas), the Officer-In-Charge City Treasurer of Cebu City, against NGCP, assailing the same Decision[5] and Resolution[6] of the CTA-EB.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo* (G.R. No. 213157), pp. 39-59. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring. Presiding Justice Roman G. Del Rosario penned a Concurring and Dissenting Opinion, with Associate Justice Ma. Belen M. Ringpis-Liban concurring.

[3] *Id*. at 60-63. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring. Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino were on leave.

[4] Under Rule 45 of the 1997 Rules of Civil Procedure.

[5] *Rollo* (G.R. No. 213558), pp. 139-159. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas concurring. Presiding Justice Roman G. Del Rosario penned a Concurring and Dissenting Opinion, with Associate Justice Ma. Belen M. Ringpis-Liban concurring.

[6] *Id*. at 183-186. Penned by Associate Justice Lovell R. Bautista, with Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A.

The Local Board of Assessment Appeals (LBAA), in its 12 October 2010 Order[7] in Case No. 6730 A, B, C on Tax Declaration Nos. COO-019-05574, COO-019-05581, and COO-019-05580, dismissed NGCP's petition for lack of merit because it was filed out of time.

The Central Board of Assessment Appeals (CBAA) dismissed NGCP's appeal from the LBAA's order. The CBAA, in CBAA Case No. V-31, found NGCP liable for real property taxes on the subject properties for the year 2009, and ruled that NGCP should claim from the National Power Corporation/National Transmission Corporation (NPC/TRANSCO) the amount of taxes that it paid for the years 2001 to 2008. The CBAA promulgated its Decision[8] on 30 May 2011 and its Order[9] on 16 November 2011.

The CTA-EB reversed and set aside the CBAA's decision and order. The CTA-EB found NGCP liable only for the real property tax incurred for the year 2009. The CTA-EB reduced NGCP's liability, and ordered the City Treasurer of Cebu City to refund NGCP its excess payment.

The Facts

The CBAA recited the facts, as summarized by NGCP, as follows:

Casanova, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban concurring. Presiding Justice Roman G. Del Rosario and Associate Justice Esperanza R. Fabon-Victorino were on leave.

[7] *Rollo* (G.R. No. 213157), p. 131; *id*. at 44. Signed by Registrar of Deeds Emmanuel M. Gimarino as Chairman, and City Prosecutor II Alexander N.V. Acosta as Member. OIC-City Engineer Kenneth Carmelita Enriquez, another Member, was absent.

[8] *Rollo* (G.R. No. 213157), pp. 170-186; *rollo* (G.R. No. 213558), pp. 80-96. Signed by Chairman Ofelia A. Marquez and Members Rafael O. Cortes and Roberto D. Geotina.

[9] *Rollo* (G.R. No. 213157), pp. 200-201; *rollo* (G.R. No. 213558), pp. 111-112.

On September 24, 2009, NGCP received from the Office of the City Treasurer of Cebu City, three (3) Final Notices of Demand, all dated September 16, 2009, addressed to National Power Corporation/ Transco for the following:

TAXPAYER'S NAME	TAX DEC. NO.	CLASSIFI-CATION	PERIOD ASSESSED	VALUE (₱)	AMOUNT DUE (₱)
NPC/TRANSCO	C00-019-05574	BLDG COMM.	2003-2009	5,010,740.00	1,456,459.68
NPC/TRANSCO	C00-019-05581	BLDG. COMM.	2001-2009	2,465,320.00	787,957.11
NPC/TRANSCO	C00-019-05580	BLDG. COMM.	2004-2009	2,552,760.00	548,445.62
				TOTAL	**₱2,792,862.41**

It was stated in the Notices of Demand that Transco/NPC was served Notices of Delinquency for all the above properties in 2008 and that failure to pay the amount demanded would result in the Public Auction of the properties above-mentioned.

Pursuant to Sec. 252 of the Local Government Code, petitioner NGCP paid the total amount demanded under protest on November 11, 2009 for ₱2,792,862.41. The written protest was filed on the same day at the office of the City Treasurer of Cebu City albeit that protest-letter is dated October 6, 2009. (Records, pp. 95 to 99)

The City Treasurer of Cebu did not act on [NGCP's] written protest. Petitioner NGCP, with main office in [Quezon City], sent its appeal, by way of registered mail on March 11, 2010, to the LBAA of Cebu City. On April 22, 2010, petitioner NGCP received copies of its verified Petition from the Post Office of Diliman, [Quezon City] with notation "RTS, insufficient address, 4-14-10." On April 26, 2010, NGCP filed its Motion to Admit Petition with the LBAA of Cebu City. In July 2010[,] the LBAA directed the City Treasurer and City Assessor of Cebu City to file their Comment on [NGCP's] Motion. The City Assessor[,] on his own, did not interpose any objection. The City Attorney, however, opposed the same in his Comment/Opposition on [the] ground that the NGCP's Petition was filed out of time and prayed the Local Board to dismiss the same accordingly. On October 12, 2010, the Local Board of Assessment Appeals of Cebu City issued the assailed Order.[10]

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[10] *Rollo* (G.R. No. 213157), pp. 171-172.

The LBAA's Ruling

The LBAA ruled in favor of the City Assessor and dismissed NGCP's petition for being filed out of time. The Order reads:

> On June 17, 2010, the Board issued twin orders: one addressed to [the] City Assessor's Office and the other to the City Treasurer's Office. The gist of the Order is to seek the opposition/comments of both offices as to "*whether or not this case may be given due course*."
>
> On July 16, 2010, respondent City Assessor filed his Comment [and] cited that the tax declarations referred to in the subject petition are properties declared in the name of NATIONAL POWER CORPORATION/TRANSCO.
>
> On July 27, 2010, the Office of the City Attorney, Cebu City, filed its Comment/Opposition to the Petitioner's Motion to Admit Petition, for respondent Cebu City Assessor Eustaquio B. Cesa. For grounds cited therein, it prayed that an Order be issued DISMISSING the instant Petition for being filed out of time.
>
> After careful examination of the pleadings filed, this Board found merit to the opposition of the respondent [City Assessor]. Hence, the Board hereby DISMISSES the instant petition, as having been filed out of time.
>
> WHEREFORE, the Petition is hereby *DISMISSED for lack of merit*.
>
> SO ORDERED.[11]

NGCP filed a notice of appeal with memorandum on appeal[12] dated 9 December 2010 with the CBAA. NGCP argued that (1) its petition before the LBAA was timely filed; (2) it had the legal personality to file the petition before the LBAA; and (3) NGCP is exempt from payment of the real property taxes subject matter of the second and final notices of demand dated 16 and 21 September 2009 in the total amount of ₱2,792,862.41.

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[11] *Id*. at 131; *rollo* (G.R. No. 213558), p. 44.

[12] *Rollo* (G.R. No. 213157), pp. 132-163; *rollo* (G.R. No. 213558), pp. 45-76.

The CBAA's Ruling

The CBAA dismissed NGCP's appeal. The CBAA found NGCP liable for real property taxes on the subject properties for the year 2009.

The CBAA stated that the petition of NGCP mailed on 11 March 2010 in the Quezon City Post Office for the LBAA of Cebu City was timely filed. The CBAA cited the following provision of Section 229(b) of the Local Government Code: "The proceedings of the Board shall be conducted solely for the purpose of ascertaining the facts without necessarily adhering to technical rules applicable in judicial proceedings." The LBAA's Order dismissing NGCP's appeal was based on a technicality and did not resolve the merits of the case. The CBAA took notice that a postal courier would probably know the locations of the offices of the City Assessor and City Treasurer but not of the LBAA. The CBAA further stated that many people, even lawyers, do not know that LBAA offices exist.

The CBAA also stated that NGCP has the legal personality to institute an appeal. The CBAA cited Section 226[13] of the Local Government Code and pronounced that NGCP has a legal interest in the properties of NPC/TRANSCO because NGCP is TRANSCO's concessionaire for electric transmission.

The CBAA declared that Section 9[14] of Republic Act No. 9511 (RA 9511), NGCP's franchise, does not exempt it

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[13] Sec. 226. *Local Board of Assessment Appeals.*– Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Local Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal.

[14] Section 9. *Tax Provisions*. – In consideration of the franchise and rights hereby granted, the Grantee, its successors or assigns, shall pay a franchise tax quivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise. Said tax shall in lieu

from payment of real property taxes on the subject properties. Section 234(a)[15] of the Local Government Code instead states that a taxable entity like NGCP, as the beneficial user of the subject properties, is liable for the real property tax. Moreover, it is the City Treasurer's duty to collect the real property tax based on the assessment of the City Assessor. The City Assessor, not the City Treasurer, has the power to decide whether a property is exempt from real property tax.

The CBAA further declared that NGCP should claim from NPC/TRANSCO the refund of the taxes due for the years 2001 to 2008. The CBAA found that the subject properties are declared in the name of NPC/TRANSCO, and the notices of demand were addressed to NPC/TRANSCO. NPC/TRANSCO made a formal turn-over of the power transmission operation to NGCP on 15 January 2009; hence, NGCP received the notices on 24 September 2009. NGCP paid the assessed amount to City Treasurer Oliva under protest, which amount included taxes due for the years 2001 to 2008.

Finally, the CBAA ruled that the subject properties do not qualify as a special class of real property under Sections

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of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly exempted: *Provided,* That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided, further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

[15] Section 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

x x x x x x x x x

216[16] and 218(d)[17] of the Local Government Code. Although the subject properties are owned by NPC/TRANSCO, the subject properties are used by NGCP, a taxable private entity engaged in the generation and transmission of electric power.

NGCP filed a motion for partial reconsideration[18] on 17 June 2011 with the CBAA. NGCP prayed that (1) the CBAA declare the real properties covered by the Second and Final Notices of Demand dated 16 and 21 September 2009 as exempt from payment of real property tax in accordance with RA 9511; (2) the CBAA direct the reclassification of the subject properties as exempt from the payment of real property tax; (3) the CBAA direct the cancellation of the real property tax billing on the

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[16] Section 216 of the Local Government Code reads: *Special Classes of Real Property.* – All lands, buildings, and other improvements thereon actually, directly and exclusively used for hospitals, cultural, or scientific purposes, and those owned and used by local water districts, and government-owned or controlled corporations rendering essential public services in the supply and distribution of water and/or generation and transmission of electric power shall be classified as special.

[17] Section 218(d) of the Local Government Code provides:

Assessment Levels.– The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

x x x x x x x x x

(d) On Special Classes: The assessment levels for all lands buildings, machineries and other improvements:

Actual Use	Assessment Level
Cultural	15%
Scientific	15%
Hospital	15%
Local water districts	10%
Government-owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power	10%

[18] *Rollo* (G.R. No. 213157), pp. 187-199; *rollo* (G.R. No. 213558), pp. 98-110.

subject properties; and (4) the CBAA direct the refund to NGCP of the payment of taxes that NGCP paid under protest. In the alternative, NGCP asked that the CBAA classify the subject properties as a special class under Section 216 of the Local Government Code, and assess the real property taxes at 10% of the fair market value as provided under Section 218(d) of the same Code. NGCP also asked for a refund of payment made in excess of the real property tax that it paid under protest, following the reclassification of the subject properties and the corresponding reassessment of the real property tax.

The CBAA denied for lack of merit NGCP's motion for partial reconsideration in an Order[19] promulgated on 16 November 2011.

NGCP filed a verified petition for review[20] dated 1 December 2011 with the CTA. NGCP reiterated in its petition before the CTA the prayer in its motion for partial reconsideration before the CBAA.

The CTA-EB's Ruling

The CTA-EB partly granted NGCP's petition in its Decision promulgated on 13 November 2013. Like the CBAA, the CTA-EB found NGCP liable for real property taxes on the subject properties only for the year 2009.

The CTA-EB stated that even though Section 9[21] of RA 9511 contains an "in lieu of all taxes" clause in its first paragraph, the succeeding paragraph states NGCP's liability to pay taxes on its "real estate, buildings, and personal property, as other corporations are now or hereby may be required by law to pay." Moreover, the Local Government Code withdrew the exemption from real property tax of NGCP's predecessors (NPC and TRANSCO). The assessed properties do not fall under the

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[19] *Rollo* (G.R. No. 213157), pp. 200-201; *rollo* (G.R. No. 213558), pp. 111-112.

[20] *Rollo* (G.R. No. 213157), pp. 202-224; *rollo* (G.R. No. 213558), pp. 113-135.

[21] *Supra* note 14.

classifications under Sections 216 and 218(d) of the Local Government Code because although NGCP is engaged in the generation and transmission of electric power, it is not a government-owned or controlled corporation.

The CTA-EB, however, noted that NGCP paid real property tax on the subject properties for 2001 to 2008, when NPC and TRANSCO were the owners of record of the subject properties. The CTA-EB held that NGCP was liable only for the real property tax incurred for the year 2009. The CTA-EB reduced NGCP's liability from ₱2,792,862.41 to ₱338,472.67, and ordered the City Treasurer of Cebu City to refund NGCP the amount of ₱2,454,389.74.

The dispositive portion of the Decision reads:

> WHEREFORE, the Petition for Review is hereby PARTLY GRANTED. Accordingly, the Decision dated May 30, 2011, and Order dated November 16, 2011 issued by the Central Board of Assessment Appeals are hereby REVERSED and SET ASIDE.
>
> Respondent [City Treasurer of Cebu City] is hereby ORDERED TO REFUND in favor of petitioner [NGCP] the amount of ₱2,454,389.74.
>
> SO ORDERED.[22]

CTA Presiding Justice Roman G. Del Rosario (PJ Del Rosario) wrote a concurring and dissenting opinion, to which Associate Justice Ma. Belen M. Ringpis-Liban concurred. PJ Del Rosario stated that Sections 216 and 218(d) of the Local Government Code cannot be made to apply to the real properties under NGCP's control because even though NGCP is engaged in the transmission of electricity, it is not a government-owned or controlled corporation. He also concurred with the opinion that NGCP should not be made liable for real property taxes for the years 2001 to 2008.

PJ Del Rosario dissented from the CTA-EB *ponencia*'s interpretation of Section 9 of RA 9511. When the real property

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[22] *Rollo* (G.R. No. 213157), p. 54; *rollo* (G.R. No. 213558), p. 154.

is used in connection with the grantee's franchise, the grantee shall not be made liable for real property tax because the franchise tax is in lieu of all taxes due on said real property. He opined that the case be remanded to the CBAA for a proper determination of whether the real properties are used in connection with NGCP's franchise. If the real properties are used in connection with the franchise, then they should be exempt from real property tax. If the real properties are not used in connection with the franchise, then they should be subject to real property tax.

The NGCP[23] and the City Treasurer of Cebu City[24] filed their respective motions for partial reconsideration.

The CTA-EB denied the motions for partial reconsideration of both parties. It found no reason to reverse or modify its decision. The CTA-EB also reminded the City Treasurer of Cebu City that taxes are not debts, and that NGCP cannot be made liable for real property taxes incurred by NPC/TRANSCO.

The Issues

In G.R. No. 213157, NGCP assigned the following errors:

1. The Honorable Court of Tax Appeals *En Banc* ruled contrary to prevailing laws and jurisprudence when it held that petitioner NGCP is not exempt from the payment of real property taxes on the subject properties.

2. The Honorable Court of Tax Appeals *En Banc* ruled contrary to prevailing laws and jurisprudence when it held that the subject properties do not qualify as "special class" of real property under Section 216 of the Local Government Code.[25]

In G.R. No. 213558, OIC Cuevas raised one issue:

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[23] *Rollo* (G.R. No. 213157), pp. 275-288; *rollo* (G.R. No. 213558), pp. 160-173.

[24] *Rollo* (G.R. No. 213157), pp. 289-296; *rollo* (G.R. No. 213558), pp. 174-181.

[25] *Rollo* (G.R. No. 213157), pp. 17-18.

The Court of Tax Appeals committed reversible error in ruling that the City of Cebu should refund in favor of NGCP the amount of ₱2,454,389.74.[26]

To our mind, we consider the following: whether NGCP is liable for the payment of real property taxes on the subject properties and whether the correct amount of taxes was paid and collected.

The Court's Ruling

The petition has merit.

We remand the case to the CBAA for the assessment and computation of the correct amount of real property taxes on the subject properties for two different periods: the years 2001 to 2008 for NPC/TRANSCO, and the year 2009 for NGCP.

For the years 2001 to 2008, the CBAA should determine whether NPC/TRANSCO owned and used the subject properties in connection with the transmission of electricity, and assess the subject properties in accordance with the Local Government Code. For the year 2009, the CBAA should determine whether the subject properties are used in connection with NGCP's franchise. Properties used in connection with NGCP's franchise are exempt from tax, in accordance with NGCP's franchise. Properties not used in connection with NGCP's franchise should be assessed and subjected to real property tax, in accordance with the Local Government Code.

NGCP's Tax Liabilities

Prior to the enactment of Republic Act No. 9136 (RA 9136), or the Electric Power Industry Reform Act of 2001 (EPIRA), the NPC was responsible for the development, production, and transmission of electric power on a nationwide basis.[27]

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[26] *Rollo* (G.R. No. 213558), p. 9.

[27] Section 2 of RA 6395 provides:

The National Power Corporation; Its Corporate Life; "Corporation" and "Board" Defined. To carry out the above-stated policy, specifically

NPC enjoyed exemption from real property taxes from 1936 until the effectivity of Republic Act No. 7160 or the Local Government Code. The effectivity of the Local Government Code on 1 January 1992 limited NPC's exemption from real property tax to "machineries and equipment that are actually, directly and exclusively used by x x x government owned or controlled corporations engaged in the x x x generation and transmission of electric power."[28] The Local Government Code stated that the assessment level for this class should not exceed the rate of 10% of the property's fair market value.[29]

With the passage of EPIRA, TRANSCO assumed NPC's transmission function.[30] RA 9511, enacted on 1 December 2008,

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to undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis, the public corporation created under Commonwealth Act Numbered One hundred twenty and known as the "National Power Corporation" shall continue to exist for fifty years from and after the expiration of its present corporate existence.

x x x x x x x x x

[28] Section 234(c) of RA 7160 provides: *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

x x x x x x x x x

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government owned or controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

x x x x x x x x x

[29] *Supra* note 17.

[30] Section 8 of RA 9136 provides:

Creation of the National Transmission Company. – There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

x x x x x x x x x

granted NGCP a legislative franchise as TRANSCO's concessionaire.[31]

NGCP's tax provisions in RA 9511 contained an "in lieu of all taxes" clause. We reproduce Section 9 of RA 9511, the tax provisions of NGCP's franchise, below:

Section 9. *Tax Provisions*. — In consideration of the franchise and rights hereby granted, the Grantee [NGCP], its successors or assigns, shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee [NGCP] from its operation under this franchise. Said tax shall be in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties and charges, the Grantee is hereby expressly

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[31] Section 1 of RA 9511 provides:

Nature and Scope of Franchise. – Subject to the provisions of the Constitution and applicable laws, rules and regulations, and subject to the terms and conditions of the concession agreement and other documents executed with the National Transmission Corporation (TRANSCO) and the Power Sector Assets and Liabilities Management Corporation (PSALM) pursuant to Section 21 of Republic Act No. 9136, which are not inconsistent herewith, there is hereby granted to the National Grid Corporation of the Philippines, hereunder referred to as the Grantee, its successors or assigns, a franchise to operate, manage and maintain, and in connection therewith, to engage in the business of conveying or transmitting electricity through high voltage back-bone system of interconnected transmission lines, substations and related facilities, systems operations, and other activities that are necessary to support the safe and reliable operation of a transmission system and to construct, install, finance, manage, improve, expand, operate, maintain, rehabilitate, repair and refurbish the present nationwide transmission system of the Republic of the Philippines, The Grantee shall continue to operate and maintain the subtransmission systems which have not been disposed by TRANSCO. Likewise, the Grantee is authorized to engage in ancillary business and any related business which maximizes utilization of its assets such as, but not limited to, telecommunications system, pursuant to Section 20 of Republic Act No. 9136. The scope of the franchise shall be nationwide in accordance with the Transmission Development Plan, subject to amendments or modifications of the said Plan, as may be approved by the Department of Energy of the Republic of the Philippines.

exempted: *Provided*, That the Grantee, its successors or assigns, shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other corporations are now or hereby may be required by law to pay: *Provided*, *further*, That payment by Grantee of the concession fees due to PSALM under the concession agreement shall not be subject to income tax and value-added tax (VAT).

Back in 2003, this *ponente* discussed the "in lieu of all taxes" clause in a separate opinion in *PLDT v. City of Davao*.[32] The Court struck down PLDT's argument that the "in lieu of all taxes" clause in Smart's franchise exempts PLDT from the payment of the local franchise tax imposed by the City of Davao. At first glance, it may seem that the "in lieu of all taxes" clause in Smart's franchise is similarly worded to that of NGCP. Smart's tax provisions in Section 9 of Republic Act No. 7294 read as follows:

Tax provisions. — The grantee, its successors or assigns shall be liable to pay the same taxes on their real estate, buildings and personal property, exclusive of this franchise, as other persons or corporations which are now or hereafter may be required by law to pay. In addition thereto, the grantee, its successors or assigns shall pay a franchise tax equivalent to three percent (3%) of all gross receipts of the business transacted under this franchise by the grantee, its successors or assigns and the said percentage shall be in lieu of all taxes on this franchise or earnings thereof: *Provided*, that the grantee, its successors or assigns shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto.

The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue.

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[32] 447 Phil. 571, 588-598 (2003).

Under Republic Act No. 7294, Smart was liable to pay the following taxes: (1) the same taxes on real estate, buildings, and personal property exclusive of the franchise, as other persons or corporations are required by law to pay; (2) a franchise tax, which shall be in lieu of taxes on franchise or earnings; and (3) income taxes under the National Internal Revenue Code.

Part of the discussion in the separate opinion went as follows:

> Tax exemptions must be clear and unequivocal. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. Any doubt whether a tax exemption exists is resolved against the taxpayer. Tax exemptions cannot arise by mere implication, much less by an implied re-enactment of a repealed tax exemption clause. x x x.
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> x x x x x x x x x
>
> Smart's franchise states that the 3 percent "***franchise tax***" shall be "in lieu of all taxes." Clearly, it is the ***franchise tax*** that shall be in lieu of all taxes referred to in Section 9, and not the VAT or any other tax. Following the rule on strict interpretation of tax exemptions, the "in lieu of all taxes" clause cannot apply when what is paid is a tax other than the franchise tax. Since the franchise tax on telecommunications companies has been abolished, the "in lieu of all taxes" clause has now become *functus officio*, rendered inoperative for lack of a franchise tax. Revenue Memorandum Circular No. 5-96 issued by the Commissioner of Internal Revenue stating that the VAT shall be "in lieu of all taxes" since it merely replaced the franchise tax is void for lack of a legal basis.
>
> x x x [T]he "in lieu of all taxes" clause in Smart's franchise refers only to taxes, other than income tax, imposed under the National Internal Revenue Code. The "in lieu of all taxes" clause does not apply to local taxes. The proviso in the first paragraph of Section 9 of Smart's franchise states that the grantee shall "continue to be liable for income taxes payable under Title II of the National Internal Revenue Code." Also, the second paragraph of Section 9 speaks of tax returns filed and taxes paid to the "Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code." Moreover, the same paragraph declares that the tax returns "shall be subject to audit by the Bureau of Internal Revenue." Nothing is mentioned in Section 9 about local taxes. The

clear intent is for the "in lieu of all taxes" clause to apply only to taxes under the National Internal Revenue Code and not to local taxes. Even with respect to national internal revenue taxes, the "in lieu of all taxes" clause does not apply to income tax.

If Congress intended the "in lieu of all taxes" clause in Smart's franchise to also apply to local taxes, Congress would have expressly mentioned the exemption from municipal and provincial taxes. Congress could have used the language in Section 9 (b) of Clavecilla's old franchise, as follows:

> x x x in lieu of any and all taxes of any kind, nature or description levied, established or collected by any authority whatsoever, ***municipal, provincial*** or national, from which the grantee is hereby expressly exempted, x x x.

However, Congress did not expressly exempt Smart from local taxes. Congress used the "in lieu of all taxes" clause only in reference to national internal revenue taxes. The only interpretation, under the rule on strict construction of tax exemptions, is that the "in lieu of all taxes" clause in Smart's franchise refers only to national and not to local taxes.

PLDT cites *Philippine Railway Co. v. Nolting* [34 Phil. 401 (1916)] to support its claim that the "in lieu of all taxes" clause includes exemption from local taxes. However, in *Philippine Railway* the franchise of the railway company expressly exempted it from ***municipal and provincial taxes***, as follows:

> Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature – *municipal, provincial* or central - upon its capital stock, franchises, right of way, earnings, and all other property owned or operated by the grantee, under this concession or franchise.

If anything, *Philippine Railway* shows the need to avoid ambiguity by specifying the taxing authority - municipal, provincial or national - from whose jurisdiction the taxing power is withheld to create the tax exemption. This is not the case in Smart's franchise, where the "in lieu of all taxes" clause refers only to national internal revenue taxes.[33]

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[33] *Id*. at 591-595. Underscoring supplied, boldfacing and italicization in the original.

We take note of the pronouncements made in the separate opinion, and apply them to the present set of facts.

First. Tax exemptions must be clear and unequivocal, and must be directly stated in a specific legal provision.

In the present case, Section 9 of RA 9511 provided for NGCP's tax liabilities and exemptions.

Second. The "in lieu of all taxes" clause is strictly limited to the kind of taxes, taxing authority, and object of taxes specified in the law.

Section 9 of RA 9511 states that NGCP's payment of franchise tax is in lieu of payment of "income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, **local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise." Thus, in contrast to Smart's franchise as quoted above, Section 9 of RA 9511 clearly stated that the NGCP's "in lieu of all taxes" clause includes taxes imposed by the local government on properties used in connection with NGCP's franchise.

We now proceed to the determination of NGCP's tax liabilities.

Determination of NGCP's Tax Liabilities

All parties are in agreement that NGCP paid real property taxes on the subject properties for the years 2001 to 2009. From 2001 to 2008, the subject properties were under the control and supervision of NPC/TRANSCO. It was only in 2009 that NGCP took control of the subject properties.

The CTA-EB summarized the amount of taxes paid by NGCP[34] as follows:

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[34] *Rollo* (G.R. No. 213157), pp. 52-53; *rollo* (G.R. No. 213558), pp. 152-153.

RPT-DS-FNOD0909-16-020				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2003	₱108,486.00	₱78,109.92	-	₱186,595.92
2004	108,486.00	78,109.92	-	186,595.92
2005	108,486.00	78,109.92	-	186,595.92
2006	150,322.20	108,231.98	-	258,554.18
2007	150,322.20	102,219.10	-	252,541.30
2008	150,322.20	66,141.77	-	216,463.97
2009	150,322.20	22,548.33	₱3,758.06	169,112.47
Total	**₱926,746.80**	**₱533,470.94**	**₱3,758.06**	**₱1,456,459.68**
RPT-DS-FNOD0909-21-030				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2001	₱ 40,324.20	₱29,033.42	-	₱69,357.62
2002	40,324.20	29,033.42	-	69,357.62
2003	40,324.20	29,033.42	-	69,357.[62]
2004	40,324.20	29,033.42	-	69,357.[62]
2005	40,324.20	29,033.42	-	69,357.[62]
2006	73,959.60	53,250.91	-	127,210.51
2007	73,959.60	50,292.53	-	124,252.13
2008	73,959.60	32,542.22	-	106,501.82
2009	73,959.60	11,093.94	-₱1,848.99	83,204.55
Total	**₱497,459.40**	**₱292,346.70**	**₱1,848.99**	**₱787,957.11**
RPT-DS-FNOD0909-21-002				
Year	**Tax Due**	**Interest**	**Discount**	**Total Amount Due**
2004	₱26,636.40	₱19,178.21	-	₱45,814.61
2005	26,636.40	19,178.21	-	45,814.61
2006	76,582.80	55,139.62	-	131,722.42
2007	76,582.80	52,076.30	-	128,659.10

2008	76,582.80	33,696.43	-	110,279.23
2009	76,582.80	11,487.42	₱1,914.57	86,155.65
Total	**₱359,604.00**	**₱190,756.19**	**₱1,914.57**	**₱548,445.62**
GRAND TOTAL				**₱2,792,862.41**

Taxes are not debts; but NGCP's payment of NPC/TRANSCO's tax liabilities made NPC/TRANSCO indebted to NGCP. Article 1236 of the Civil Code is applicable in the present situation: NGCP has an interest in the payment of NPC/TRANSCO's real property taxes from 2001 to 2008. NGCP will not be able to exercise its franchise should the local government auction the subject properties. The City Treasurer of Cebu City, on the other hand, is bound to accept NGCP's payment of the taxes due from NPC/TRANSCO. NGCP's remedy then, is to demand, not from the City Treasurer of Cebu City, but from NPC/TRANSCO the amount of taxes which redounded to its benefit. Article 1236 provides in part:

> Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

However, the City Treasurer of Cebu City may collect real property taxes only in the proper amount. The City Treasurer of Cebu City should refund to NGCP any excess in its payment.

Applicable Taxes from 2001 to 2008

The subject properties were under the control of NPC/TRANSCO from 2001 to 2008. NPC/TRANSCO was not exempt from real property tax during this period. The applicable laws on real property taxes on the subject properties from 2001 to 2008 are Sections 216[35] and 218(d)[36] of the Local Government Code.

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[35] *Supra* note 16.

[36] *Supra* note 17.

The CBAA should determine whether the subject properties belong to the special classes of real property defined in Section 216: whether they are "owned and used by x x x government-owned or controlled corporations rendering essential public services in the x x x generation and transmission of electric power." If the subject properties belong to the special classes of real property, then the assessment level should not exceed 10%, in accordance with Section 218(d). If the subject properties do not belong to the special classes of real property, then the assessment level should be based on actual use,[37] in accordance with Section 218(a-c).[38]

Applicable Taxes for 2009

NGCP took control of the subject properties in 2009. Although laws on real property taxes are prescribed by the Local Government Code, it is imperative to examine the applicable

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[37] Section 217 of the Local Government Code reads: *Actual Use of Real Property as Basis for Assessment.* – Real property shall be classified, valued and assessed on the basis of its actual use regardless of where located, whoever owns it, and whoever uses it.

[38] Section 218 of the Local Government Code reads: *Assessment Levels.* – The assessment levels to be applied to the fair market value of real property to determine its assessed value shall be fixed by ordinances of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan of a municipality within the Metropolitan Manila Area, at the rates not exceeding the following:

(a) On Lands:

Class	Assessment Levels
Residential	20%
Agricultural	40%
Commercial	50%
Industrial	50%
Mineral	50%
Timberland	20%

tax provisions in NGCP's franchise.

(b) On Buildings and Other Structures:

(1) Residential

Fair Market Value		
Over	Not Over	Assessment Levels
₱ 175,000.00	₱ 175,000.00	0%
300,000.00	300,000.00	10%
500,000.00	500,000.00	20%
750,000.00	750,000.00	25%
1,000,000.00	1,000,000.00	30%
2,000,000.00	2,000,000.00	35%
5,000,000.00	5,000,000.00	%
10,000,000.00	10,000,000.00	50%
		60%

(2) Agricultural

Fair Market Value		
Over	Not Over	Assessment Levels
₱ 300,000.00	₱ 300,000.00	25%
500,000.00	500,000.00	30%
750,000.00	750,000.00	35%
1,000,000.00	1,000,000.00	40%
2,000,000.00	2,000,000.00	45%
		50%

(3) Commercial / Industrial

Fair Market Value		
Over	Not Over	Assessment Levels
₱ 175,000.00	₱ 175,000.00	30%
300,000.00	300,000.00	35%
500,000.00	500,000.00	40%
750,000.00	750,000.00	50%
1,000,000.00	1,000,000.00	60%
2,000,000.00	2,000,000.00	70%
5,000,000.00	5,000,000.00	75%
10,000,000.00	10,000,000.00	80%

Section 9[39] of RA 9511 provides that NGCP shall pay "a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise." This franchise tax is "**in lieu of** income tax and **any and all taxes**, duties, fees and charges of any kind, nature or description levied, **established or collected by any authority whatsoever, local or national**, on its franchise, rights, privileges, receipts, revenues and profits, and **on properties used in connection with its franchise**, **from which taxes**, duties and charges, **the Grantee is hereby expressly exempted**."

It is very clear that NGCP's payment of franchise tax exempts it from payment of real property taxes on properties used in connection with its franchise. However, NGCP's tax exempt status on real property due to the "in lieu of all taxes" clause is qualified: NGCP shall be liable to pay the same tax as other corporations on real estate, buildings and personal property exclusive of their franchise. The phrase "exclusive of this franchise" means that real estate, buildings, and personal property

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(4) Timberland
Fair Market Value

Over	Not Over	Assessment Levels
₱ 300,000.00	₱ 300,000.00	45%
500,000.00	500,000.00	50%
750,000.00	750,000.00	55%
1,000,000.00	1,000,000.00	60%
2,000,000.00	2,000,000.00	65%
		70%

(c) On Machineries

Class	Assessment Levels
Agricultural	40%
Residential	50%
Commercial	80%
Industrial	80%

[39] *Supra* note 14.

used in the exercise of the franchise are not subject to the same tax as other corporations.

The CBAA should determine whether the subject properties are properties used in connection with NGCP's franchise. If the subject properties are used in connection with NGCP's franchise, then NGCP is exempt from paying real property taxes on the subject properties. If the subject properties are not used in connection with NGCP's franchise, then the assessment level should be based on actual use,[40] in accordance with Section 218(a-c) of the Local Government Code.[41]

Correctness of the Amount of Taxes Collected and Paid

Given our explanation above, the amount of taxes assessed by the City Assessor of Cebu City, collected by the City Treasurer of Cebu City, and paid by NGCP was incorrect. The correct assessment, as well as its corresponding amount, is subject to the determination by the CBAA.

After the CBAA's determination of the real property tax due, done in accordance with the guidelines we set forth above, the City Treasurer of Cebu City should refund the excess payment, if any, to NGCP. NGCP, in turn, should seek relief from NPC/TRANSCO to the extent that NPC/TRANSCO has benefited from NGCP's payment to the City Treasurer of Cebu City.

WHEREFORE, we **GRANT** the petitions. The Decision promulgated on 13 November 2013 and the Resolution promulgated on 23 June 2014 by the Court of Tax Appeals En Banc in CTA EB Case No. 849 are **SET ASIDE**.

We **REMAND** this case to the Central Board of Assessment Appeals which is directed to determine the following:

1. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 belong to the special classes of real

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[40] *Supra* note 37.

[41] *Supra* note 38.

property described in Section 216 of the Local Government Code, and assess the appropriate amount of real property taxes for the years 2001 to 2008; and

2. whether the properties covered by RPT-DS-FNOD0909-16-020, RPT-DS-FNOD0909-21-030, and RPT-DS-FNOD0909-21-002 are used by the National Grid Corporation of the Philippines in connection with its franchise. If the subject properties are not used in connection with NGCP's franchise, then the CBAA should assess the appropriate amount of real property taxes for the year 2009.

The City Treasurer of Cebu City shall refund to the NGCP any payment which it made in excess of the correct amount.

SO ORDERED.

Del Castillo and *Leonen, JJ.,* concur.

Brion, J., on leave.

Mendoza, J., on official leave.

THIRD DIVISION

[G.R. No. 213380. August 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMAN ESPIA,** *accused-appellant*, **JESSIE MORANA, REX ALFARO, RODRIGO AZUCENA, JR., and RENANTE ABISADO,** *accused.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS; PRESENT.— The trial

and appellate courts committed no error in convicting 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. x x x. No doubt exists that all the foregoing elements are present in the case at bar.

2. ID.; ID.; ID.; THERE IS A DIRECT RELATION OR INTIMATE CONNECTION BETWEEN THE ROBBERY AND THE KILLING, WHETHER THE LATTER BE PRIOR OR SUBSEQUENT TO THE FORMER OR WHETHER BOTH CRIMES BE COMMITTED AT THE SAME TIME, AND ALL THOSE WHO TOOK PART AS PRINCIPALS IN THE ROBBERY WOULD ALSO BE HELD LIABLE AS PRINCIPALS OF THE SINGLE AND INDIVISIBLE FELONY OF ROBBERY WITH HOMICIDE, ALTHOUGH THEY DID NOT ACTUALLY TAKE PART IN THE KILLING, UNLESS IT CLEARLY APPEARS THAT THEY ENDEAVORED TO PREVENT THE SAME.— [I]n *People v. Maneng*, this Court held that homicide may precede the robbery or may occur after the robbery, as what is essential is that there is a direct relation, an intimate connection between the robbery and the killing. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery. Furthermore, in the crime of robbery with homicide, what is essential is that there is a direct relation or intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time. When homicide is committed by reason or on the occasion of a robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.

3. ID.; ID.; CONSPIRACY; CAN BE INFERRED FROM AND ESTABLISHED BY THE ACTS OF THE ACCUSED THEMSELVES WHEN SAID ACTS POINT TO A JOINT PURPOSE AND DESIGN, CONCERTED ACTION AND COMMUNITY OF INTERESTS.— According to Article 8 of the RPC, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. When there is conspiracy, the act of one is the act of all. Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. There should be a proof establishing that the accused were animated by one and the same purpose. In the case at bar, Jessie and Rex also testified that appellant was present when they planned to rob the Ganzon's residence the day before the incident. Furthermore, in robbing the Ganzon's residence, appellant served as a look out while the others were robbing and ransacking the house. Danilo even testified that it was appellant who forcibly brought Mr. Ganzon from the bedroom to the sala of the house before tying his hands and feet. Thus, the foregoing circumstances prove beyond reasonable doubt that all of the accused acted in concert to commit the crime of Robbery with Homicide.

4. REMEDIAL LAW; EVIDENCE; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED MUST BE ABLE TO PROVE HIS PRESENCE AT ANOTHER PLACE AT THE TIME OF THE PERPETRATION OF THE OFFENSE AND MUST DEMONSTRATE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM AT THAT TIME TO HAVE BEEN AT THE SCENE OF THE CRIME.— Well-settled is the rule that alibi is always viewed with suspicion, because it is inherently weak and unreliable. The defense of alibi assumes significance or strength only when it is amply corroborated by a credible witness. A categorical and consistent positive identification without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevails over a denial. For alibi to prosper, the accused must be able to (a) prove his presence at another place at the time of the perpetration of the offense and (b) demonstrate that it was physically impossible for him at that time to have been at the scene of the crime. x x x. In this case, appellant was not able to present any evidence

that he was in Cavite on the date the offense was committed. His claim that he was a garbage collection truck driver in Cavite deserves scant consideration as he was employed from 1998 to 2000 and not in 1991 — the year the crime was committed. Therefore, it is not physically impossible for appellant to be present at the scene of the crime at the time it was committed.

5. ID.; ID.; DEFENSE OF DENIAL; INHERENTLY WEAK BECAUSE IT CAN EASILY BE FABRICATED AND IT IS UNWORTHY OF MERIT IF IT IS ESTABLISHED ONLY BY THE ACCUSED THEMSELVES AND NOT BY CREDIBLE PERSONS.— Such denial should all the more be discredited in light of the fact that the direct examination testimonies of Azucena and Danilo positively identified appellant as one of the men who robbed the Ganzon's residence x x x. This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses. It is doctrinally entrenched in jurisprudence that the defense of denial is inherently weak because it can easily be fabricated. Such defense becomes unworthy of merit if it is established only by the accused themselves and not by credible persons. Thus, this Court agrees with the lower courts in giving the positive identification of the eyewitnesses more weight than accused-appellant's defense of denial.

6. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; IF COMMITTED BY A BAND MERITS THE IMPOSITION OF DEATH PENALTY.— We take this opportunity to elucidate and stress that if robbery with homicide is committed by a band, the indictable offense is still denominated as robbery with homicide under Article 294(1) of the RPC. The element of band would be appreciated as an ordinary aggravating circumstance. The presence of the element of band as a generic aggravating circumstance would have merited the imposition of death penalty. However, in view of R.A. No. 9346, we are mandated to impose on appellant the penalty of *reclusion perpetua.*

7. ID.; ID.; ID; CIVIL LIABILITY OF ACCUSED-APPELLANT.— This Court resolves to modify the damages

awarded by the appellate court. In line with recent jurisprudence, appellant shall pay the heirs of the Spouses Ganzon ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for the death of each victim. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Judgment until fully paid.

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 the Court is an appeal from the Decision[1] of the Court of Appeals (CA) dated 13 December 2013 in CA-G.R. CR HC No. 00448, affirming the Decision[2] of the Regional Trial Court (RTC), Branch 25, 6th Judicial Region, Iloilo City, finding appellant Roman Espia 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 (RPC).

Appellant was charged with Robbery in Band with Homicide. The accusatory portion of the Information narrates:

That on or about February 21, 1991, in the Municipality of B[aro]tac Viejo, Province of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and working together with Roman Espia and Renante Abisado, who are still at large, thereby forming themselves into a band, armed with short firearms, taking advantage of the nighttime,

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[1] *Rollo*, pp. 4-14; Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Ramon Paul L. Hernando and Carmelita Salandanan-Manahan concurring.

[2] Records, pp. 326-341; Presided by Judge Evelyn E. Salao.

their superior strength and number, to better realize their purpose, by means of force and violence upon person, entered the house of the spouses Melberto and Estela Ganzon and once inside, did, then and there willfully, unlawfully and feloniously take, steal and carry away with intent to gain, the following:

Cash money amounting to Three Hundred Thousand ₱300,000.00

Checks of different face value totaling to ₱210,000.00

Assorted pieces of jewelries valued at One Million ₱1,000,000.00

all belonging to the spouses Melberto and Estela Ganzon, against their will and consent and to their damage and prejudice in the total amount of ONE MILLION FIVE HUNDRED TEN (₱1,510,000.00) THOUSAND PESOS, Philippine Currency; that on the occasion of said robbery, said accused, did then and there willfully, unlawfully and feloniously attack, assault and shoot Melberto Ganzon and Estela Ganzon, hitting and inflicting upon them gunshot wound on the vital parts of their body which caused their instantaneous death.[3]

On arraignment, appellant entered a plea of NOT GUILTY.[4] Trial on the merits ensued thereafter.

The Facts

The antecedent facts culled from the Appellee's Brief [5] and the records of the case are summarized as follows:

On 21 February 1991, at around 7:00 in the evening, appellant, Jessie Morana (Jessie), Rex Alfaro (Rex), Rodrigo Azucena, Jr. (Rodrigo) and Renante Abisado (Renante) entered the Ganzon's residence and declared a hold-up after pointing their guns at Mrs. Estela Ganzon (Mrs. Ganzon) and house helper, Azucena Perez (Azucena). While appellant was standing by the door as a look out, the hands and feet of Mr. Melberto Ganzon (Mr. Ganzon), Azucena, and another house helper, Danilo

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

[4] *Id*. at 68.

[5] CA *rollo,* pp. 112-122.

Ballener (Danilo) were being tied by one of the co-accused. Later on, Danilo saw another co-accused bring Mrs. Ganzon to the bedroom and overheard her say, "*Here are the jewelry and the cash we collected for the day.*" The men who entered the house also took the silverware, chinaware and other valuables of the spouses.[6]

After some time, the men locked Danilo and Azucena inside the bathroom and told them that they will just borrow the spouses. Thereafter, Danilo and Azucena heard the sound of the spouses' jeepney speeding away.

When the house helpers were able to free themselves from the ropes, they immediately reported the incident to Mrs. Ganzon's father. When the latter came, it was learned that ₱300,000.00 amount of cash, ₱1,000,000.00 amount of jewelry, and ₱210,000.00 amount of checks were taken. Spouses Ganzon were found dead due to gunshot wounds on their heads[7] in Gen. Luna, Barotac, Viejo the following morning.

When apprehended by the police and during the preliminary investigation, Rex[8] and Jessie[9] confessed their participation in the robbery. They also implicated appellant, Renante, and Rodrigo as their co-conspirators. Consequently, the police recovered from the houses of Rex and Jessie, cash and several pieces of jewelry.

Appellant vehemently denied the accusations.[10] According to him, even if he was a native of and a farm owner in Imbaulan, Lemery, Iloilo, a town adjacent to Barotac Viejo, Iloilo, he was residing in Dasmariñas, Cavite since 1990 and was a driver of the municipality's garbage collection truck from 1998 to 2000. He also said that he doesn't know his four (4) co-accused.

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[6] TSN, 5 June 2003, pp. 3-8.

[7] Records, pp. 35-36.

[8] *Id*. at 17-19.

[9] *Id*. at 20-22.

[10] TSN, 1 April 2005, pp. 2-11.

Ruling of the Regional Trial Court

On 11 May 2006, the RTC rendered a decision finding appellant guilty of Robbery with Homicide. The dispositive portion of the decision reads:

> **WHEREFORE,** the accused Roman Espia having been found beyond reasonable doubt to be guilty of robbery with homicide, he is hereby sentenced to suffer the penalty of **RECLUSION PERPETUA** and to pay the heirs of the victim[s] Melberto and Estela Ganzon the following amount of ₱50,000.00 each for Melberto and Estela Ganzon as death Indemnity; ₱20,000.00 as exemplary damages, ₱500,000.00 as actual damages and to return the jewelry and valuables to the heirs of spouses Ganzon or to pay its value in the amount of ₱1,000,000.00.[11]

Ruling of the Court of Appeals

The Court of Appeals sustained the appellant's conviction. It was fully convinced that there is no ground to deviate from the findings of the RTC. The dispositive portion of the decision reads:

> **WHEREFORE,** in light of the foregoing, the appeal is **DENIED.** The Decision of the Regional Trial Court, Branch 25, 6th Judicial Region, Iloilo City, dated May 11, 2006, in Criminal Case No. 36127 is hereby **AFFIRMED.**[12]

Appellant appealed the decision of the Court of Appeals. The Notice of Appeal was given due course and the records were ordered elevated to this Court for review. In a Resolution[13] dated 20 August 2004, this Court required the parties to submit their respective supplemental briefs. Both parties manifested that they are adopting all the arguments contained in their respective briefs in lieu of filing supplemental briefs.[14]

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[11] Records, p. 341.

[12] *Rollo*, p. 13.

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

[14] *Id.* at 23-24 and 28-29.

In his Brief,[15] appellant assigned the following errors:

I. THE LOWER COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN BEYOND REASONABLE DOUBT ACCUSED-APPELLANT'S GUILT;

II. THE LOWER COURT ERRED IN GIVING CREDENCE TO THE BIASED IDENTIFICATION OF ACCUSED-APPELLANT BY THE PROSECUTION WITNESSES;

III. THE LOWER COURT ERRED IN HOLDING ACCUSED-APPELLANT LIABLE TO PAY DAMAGES.

Our Ruling

We find that the degree of proof required in criminal cases has been met in the case at bar. Accused-appellant's defenses of denial and alibi are bereft of merit.

Elements of Robbery with Homicide Were established

The trial and appellate courts committed no error in convicting appellant of Robbery with Homicide. Article 294, paragraph (1) of the RPC, as amended by R.A. No. 7659, reads:

Art. 294 *Robbery with violence against or intimidation of persons – Penalties.* – 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

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[15] CA *rollo*, pp. 70-82.

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.[16]

Furthermore, in *People v. Maneng*,[17] this Court held that homicide may precede the robbery or may occur after the robbery, as what is essential is that there is a direct relation, an intimate connection between the robbery and the killing. A conviction requires certitude that the robbery is the main purpose and objective of the malefactor, and the killing is merely incidental to the robbery.[18]

Furthermore, in the crime of robbery with homicide, what is essential is that there is a direct relation or intimate connection between the robbery and the killing, whether the latter be prior or subsequent to the former or whether both crimes be committed at the same time.[19] When homicide is committed by reason or on the occasion of a robbery, all those who took part as principals in the robbery would also be held liable as principals of the single and indivisible felony of robbery with homicide, although they did not actually take part in the killing, unless it clearly appears that they endeavored to prevent the same.[20]

No doubt exists that all the foregoing elements are present in the case at bar. Appellant's co-accused admitted the taking of the cash, checks, and pieces of jewelry of Spouses Ganzon. In fact, some of which were even found in the houses of his co-accused. Furthermore, the testimonies of the eyewitnesses were strengthened by the admission of Rex and Jessie that they indeed used firearms in order to ensure the consummation of the robbery. Importantly, the contemporaneous acts of appellant

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

[17] *People v. Maneng*, 397 Phil. 98, 107 (2000).

[18] *People v. FO1 dela Cruz*, 595 Phil. 998, 1023 (2008).

[19] *People v. Pajotal,* 420 Phil. 763, 777 (2001).

[20] *People v. Ebet,* 649 Phil. 181, 190 (2010).

and his co-accused in entering the Ganzon's residence; ordering its occupants to drop to the ground; asking where the money and other valuables were kept; and taking the cash and several personal belongings of the Spouses Ganzon prove that they were initially motivated by *animus lucrandi.* The testimony of co-accused Morana[21] regarding the robbery up to the events leading to the killing of the victims establishes that the crime of homicide was committed on the occasion or by reason of robbery.

In Conspiracy, the act of one is the act of all

According to Article 8 of the RPC, conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. When there is conspiracy, the act of one is the act of all. Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests. There should be a proof establishing that the accused were animated by one and the same purpose. [22]

In the case at bar, Jessie and Rex also testified that appellant was present when they planned to rob the Ganzon's residence the day before the incident.[23] Furthermore, in robbing the Ganzon's residence, appellant served as a look out while the others were robbing and ransacking the house. Danilo even testified that it was appellant who forcibly brought Mr. Ganzon from the bedroom to the sala of the house before tying his hands and feet.[24] Thus, the foregoing circumstances prove beyond reasonable doubt that all of the accused acted in concert to commit the crime of Robbery with Homicide.

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[21] Records, p. 21.

[22] *Quidet v. People,* 632 Phil. 1, 11-12 (2010) citing *People v. De Jesus*, 473 Phil. 405, 928 (2004).

[23] Records, p. 20.

[24] TSN, June 5, 2003, p. 6.

The defense of denial cannot be given more weight over a witness' positive identification

Appellant denies the accusations on the ground that he was residing in Dasmariñas, Cavite since 1990 and was a driver of the municipality's garbage collection truck from 1998 to 2000. He also claimed that he doesn't know the other co-accused. We are not convinced. Well-settled is the rule that alibi is always viewed with suspicion, because it is inherently weak and unreliable. The defense of alibi assumes significance or strength only when it is amply corroborated by a credible witness.[25] A categorical and consistent positive identification without any showing of ill motive on the part of the eyewitnesses testifying on the matter prevails over a denial.[26]

For alibi to prosper, the accused must be able to (a) prove his presence at another place at the time of the perpetration of the offense and (b) demonstrate that it was physically impossible for him at that time to have been at the scene of the crime.[27]

In *People v. Taboga*,[28] physical impossibility was defined as the distance and the facility of access between the *situs* of the crime and the location of the accused when the crime was committed. It must be demonstrated that he was so far away and could not have been physically present at the scene of the crime and its immediate vicinity when the crime was committed.[29]

In this case, appellant was not able to present any evidence that he was in Cavite on the date the offense was committed. His claim that he was a garbage collection truck driver in Cavite deserves scant consideration as he was employed from 1998 to

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[25] *People v. Domingo*, 432 Phil. 590, 608 (2002).

[26] *Anilao v. People,* 562 Phil. 93, 100 (2007).

[27] *People v. Domingo*, *supra* note 25.

[28] *People v. Taboga*, G.R. Nos. 144086-87, 426 Phil. 908, 925 (2002).

[29] *People v. Amora*, G.R. No. 190322, 26 November 2014, 742 SCRA 667.

2000 and not in 1991 – the year the crime was committed. Therefore, it is not physically impossible for appellant to be present at the scene of the crime at the time it was committed.

Such denial should all the more be discredited in light of the fact that the direct examination testimonies of Azucena and Danilo positively identified appellant as one of the men who robbed the Ganzon's residence:

Danilo's Testimony:

Q: Please look inside the courtroom and tell us if one of those persons you recognized is present?
A: Yes, he is there.

Q: Please point to him.
A: That person near the guard (Witness points to a person inside the courtroom who upon being asked, identified himself as Roman Espia).[30]

Azucena's Testimony:

Q: Please look inside the courtroom and see if you could see any of those persons whom you said entered the house of the spouses Melberto and Estela Ganzon?
A: Yes sir, I saw one here.

Q: Where is he?
A: The first person on that seat.

x x x x x x x x x

INTERPRETER: Witness pointing to a person inside the courtroom who identifies himself as Roman Espia. [31]

This Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.[32]

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[30] TSN, 5 June 2003, pp. 9-10.

[31] TSN, 1 August 2003, pp. 11-12.

[32] *People v. Abat,* G.R. No. 202704, 2 April 2014, 720 SCRA 557, 564.

It is doctrinally entrenched in jurisprudence[33] that the defense of denial is inherently weak because it can easily be fabricated. Such defense becomes unworthy of merit if it is established only by the accused themselves and not by credible persons. Thus, this Court agrees with the lower courts in giving the positive identification of the eyewitnesses more weight than accused-appellant's defense of denial.

The penalty, damages and civil liability

We take this opportunity to elucidate and stress that if robbery with homicide is committed by a band, the indictable offense is still denominated as robbery with homicide under Article 294(1) of the RPC. The element of band would be appreciated as an ordinary aggravating circumstance.[34]

The presence of the element of band as a generic aggravating circumstance would have merited the imposition of death penalty. However, in view of R.A. No. 9346, we are mandated to impose on appellant the penalty of *reclusion perpetua*.

This Court resolves to modify the damages awarded by the appellate court. In line with recent jurisprudence,[35] appellant shall pay the heirs of the Spouses Ganzon ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for the death of each victim. In addition, interest at the rate of six percent (6%) *per annum* shall be imposed on all monetary awards from date of finality of this Judgment until fully paid.

WHEREFORE, the 13 December 2013 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00448 is **AFFIRMED** with **MODIFICATION**. Appellant ROMAN ESPIA is found **GUILTY** beyond reasonable doubt of the crime of Robbery

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[33] *People v. Barde*, 645 Phil. 434, 457 (2010); *People v. Berdin,* 462 Phil. 290, 304 (2003); *People v. Francisco*, 397 Phil. 973, 985 (2000).

[34] *People v. Ngano Sugan*, 661 Phil. 749, 756 (2011).

[35] *People v. Jugueta,* G.R. No. 202124, 5 April 2016.

with Homicide and shall suffer a penalty of *Reclusion Perpetua* and shall pay the heirs of the Spouses Melberto and Estela Ganzon ₱500,000.00 as actual damages and to return the jewelry and valuables to the heirs of spouses Ganzon or to pay its value in the amount of ₱1,000,000.00. As modified, appellant shall be liable to the heirs of Spouses Ganzon in the following amounts: (1) ₱100,000.00 as civil indemnity; (2) ₱100,000.00 as moral damages; (3) ₱100,000.00 as exemplary damages for the death of each victim; and (4) 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 judgment until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 214077. August 10, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **DANILO A. PANGASINAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE OF THE PHILIPPINES; MARRIAGE; PSYCHOLOGICAL INCAPACITY; DEFINED; THE PSYCHOLOGICAL INCAPACITY TO COMPLY WITH HIS OR HER ESSENTIAL OBLIGATIONS IN MARRIAGE MUST BE ROOTED ON

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[*] Additional Member per Raffle dated 1 August 2016.

A MEDICALLY OR CLINICALLY IDENTIFIABLE GRAVE ILLNESS THAT IS INCURABLE AND SHOWN TO HAVE EXISTED AT THE TIME OF MARRIAGE, ALTHOUGH THE MANIFESTATIONS THEREOF MAY ONLY BE EVIDENT AFTER MARRIAGE.— "Psychological incapacity," as a ground to nullify marriage under Article 36 of the Family Code, should refer to no less than a mental—not merely physical—incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support. As declared by the Court in *Santos v. Court of Appeals*, psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. Thereafter, in *Molina*, the Court laid down more definitive guidelines in the disposition of psychological incapacity cases x x x. In sum, a person's psychological incapacity to comply with his or her essential obligations, as the case may be, in marriage must be rooted on a medically or clinically identifiable grave illness that is incurable and shown to have existed at the time of marriage, although the manifestations thereof may only be evident after marriage. Using the abovementioned standards in the present case, the Court finds that the totality of evidence presented is insufficient to establish Josephine and Danilo's psychological incapacity.

2. **ID.; ID.; ID.; ID.; IF THE TOTALITY OF EVIDENCE PRESENTED IS ENOUGH TO SUSTAIN A FINDING OF PSYCHOLOGICAL INCAPACITY, THE ACTUAL MEDICAL EXAMINATION OF THE PERSON CONCERNED NEED NOT BE RESORTED TO, BUT THE TOTALITY OF EVIDENCE MUST STILL PROVE THE GRAVITY, JURIDICAL ANTECEDENCE AND INCURABILITY OF THE ALLEGED PSYCHOLOGICAL INCAPACITY AND THAT THE PSYCHOLOGICAL ILLNESS AND ITS ROOT CAUSE EXISTS FROM THE INCEPTION OF THE MARRIAGE.—** It is true that in petitions for nullification of marriages, it is not necessary that a physician examine the person to be declared psychologically incapacitated. What is important is the presence of evidence that can adequately establish the party's psychological condition.

If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to. However, the totality of evidence must still prove the gravity, juridical antecedence and incurability of the alleged psychological incapacity. In addition to the foregoing, the psychological illness and its root cause must be proven to exist from the inception of the marriage. In this case, there is no such reliable and independent evidence establishing Josephine's psychological condition and its associations in her early life. Aside from what Danilo relayed to Dr. Dayan, no other evidence supports his claim and Dr. Dayan's finding that the root cause of Josephine's personality disorder antedated the marriage since Emelie and Jay's testimonies covered circumstances that transpired **after** the marriage.

3. **ID.; ID.; ID.; ID; A MARRIAGE CANNOT BE DISSOLVED AT THE WHIM OF THE PARTIES, ESPECIALLY WHERE THE PIECES OF EVIDENCE PRESENTED ARE GROSSLY DEFICIENT TO SHOW THE JURIDICAL ANTECEDENCE, GRAVITY AND INCURABILITY OF THE CONDITION OF THE PARTY ALLEGED TO BE PSYCHOLOGICALLY INCAPACITATED TO ASSUME AND PERFORM THE ESSENTIAL MARITAL DUTIES.—** [I]n view of the insufficiency of factual bases of and generalizations in her Psychological Evaluation Report, Dr. Dayan's testimony is inadequate to establish concretely the correlation between Josephine's personality and her inability to comply with her essential marital obligations to Danilo. Dr. Dayan merely made, as it were, a general assessment and conclusion as to the gravity and pervasiveness of Josephine's condition without sufficiently explaining how she arrived at such condition x x x. The stringency by which the Court assesses the sufficiency of psychological evaluation reports is necessitated by the pronouncement in our Constitution that marriage is an inviolable institution protected by the State. It cannot be dissolved at the whim of the parties, especially where the pieces of evidence presented are grossly deficient to show the juridical antecedence, gravity and incurability of the condition of the party alleged to be psychologically incapacitated to assume and perform the essential marital duties. Any doubt should be

resolved in favor of its existence and continuation and against its dissolution and nullity.

4. ID.; ID.; ID.; ID.; MERE SHOWING OF "IRRECONCILABLE DIFFERENCES" AND "CONFLICTING PERSONALITIES" DOES NOT CONSTITUTE PSYCHOLOGICAL INCAPACITY NOR DOES FAILURE OF THE PARTIES TO MEET THEIR RESPONSIBILITIES AND DUTIES AS MARRIED PERSONS, AS THE MEANING OF "PSYCHOLOGICAL INCAPACITY" IS CONFINED TO THE MOST SERIOUS CASES OF PERSONALITY DISORDERS CLEARLY DEMONSTRATIVE OF AN UTTER INSENSITIVITY OR INABILITY TO GIVE MEANING AND SIGNIFICANCE TO THE MARRIAGE.— It has been held that mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity nor does failure of the parties to meet their responsibilities and duties as married persons. These differences do not rise to the level of psychological incapacity under Article 36 of the Family Code and are not manifestations thereof which may be a ground for declaring their marriage void. If at all, these are difficulties that couples ordinarily deal with in the course of their marriage. In *Marable v. Marable*, this Court stressed that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. Rather, it is essential that the concerned party was incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage. The intendment of the law has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage. Josephine's insensitivity to Danilo's plight translates to a mere refusal on her part to perform her duties as his wife brought about by their arguments over their finances, and not an outright incapability to do so.

5. ID.; ID.; ID.; ID.; THE INCAPACITY OF EITHER OR BOTH PARTIES MUST BE PROVED BY PREPONDERANCE OF EVIDENCE, AND THE COMPLETE FACTS SHOULD ALLEGE THE PHYSICAL MANIFESTATIONS, IF ANY, AS ARE INDICATIVE OF PSYCHOLOGICAL INCAPACITY AT THE TIME OF THE CELEBRATION

OF THE MARRIAGE.— Neither can the marriage be nullified on the basis of Danilo's supposed psychological incapacity. While Danilo was likewise diagnosed to be suffering from "301.9 Personality Disorder Not Otherwise Specified, presenting symptoms of Passive-Aggressive and Avoidant Personality Disorder," which the RTC considered in declaring the couple's marriage null and void, Danilo anchored his petition on the psychological incapacity of Josephine only. Section 2 of the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages* specifically states: Section 2. Petition for declaration of absolute nullity of void marriages. x x x. (d) What to allege. – **A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration**. The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage, but expert opinion need not be alleged. Records show that Danilo's petition is hinged primarily on his allegation that Josephine is psychologically incapacitated to fulfil her marital obligations. Notably, Danilo's testimony and the information gathered from Dr. Dayan's interview with Gatus and Jay are inclined to prove Josephine's incapacity. As in Josephine's case, the records are bereft of any independent evidence nor allegation of facts pointing to the psychological incapacity of Danilo. Therefore, in addition to Danilo's failure to allege the complete facts showing his incapacity to comply with his essential marital obligations to Josephine, he likewise failed to prove his wife's incapacity by preponderance of evidence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Añover Añover San Diego & Primavera Law Offices for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Assailed in this Petition for Review on *Certiorari* are the Decision[1] dated March 10, 2014 and Resolution[2] dated August 26, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 99739 which affirmed the Decision[3] dated March 6, 2012 in Civil Case No. 11-0205 of the Regional Trial Court, Branch 260 in Parañaque City (RTC), declaring the marriage of respondent Danilo A. Pangasinan and Josephine P. Pangasinan void on the ground of their respective psychological incapacity pursuant to Article 36 of the Family Code of the Philippines.

The Facts

Danilo and Josephine first met at the Philippine Plaza Hotel in Manila where they were both working sometime in 1981. Following a three-month courtship, Josephine became pregnant. To erase any notion of impropriety, the couple immediately contracted marriage, first civilly on December 29, 1981, followed by a church wedding on January 23, 1982.[4] The couple begot three children––Juan Carlo, Julia Erika, and Josua.

At the outset, life for Danny and Josephine generally ran harmoniously, although marred from time to time by arguments about money matters. They did not have any major problems, and even became partners in Danilo's business pursuits.[5] Signs

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[1] *Rollo*, pp. 36-43. Penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jose C. Reyes, Jr. and Socorro B. Inting.

[2] *Id*. at 44.

[3] *Id*. at 139-147.

[4] *Id*. at 45-46, 57.

[5] *Id*. at 75-76. (Report)

of marital kinks appeared when Danilo's business began to slow down. This caused the couple to fight incessantly, since Danilo began to have difficulty supporting Josephine and their children at the same level to which they were accustomed.[6] Allegations of infidelity on the part of Danilo compounded things.[7]

Sometime in September 2007, Josephine underwent hysterectomy. Four days after bringing her home from the hospital, Danilo flew to Tacloban for a business trip, which Josephine already knew of even prior to her operation. As it turned out, Josephine did not want him to leave. Danilo came home to find an irate Josephine seething at him. Josephine's sudden demand to see his bank passbook so enraged Danilo that he tossed the passbook in front of her. Josephine, in turn, became incensed and started to curse and berate him. Out of anger and exasperation, Danilo grabbed and smashed two glass cups beside him, while Josephine continued on with her tirade against him. Josephine left the conjugal home the next day, never to resume cohabitation with Danilo.[8]

Thereafter, Josephine filed a number of cases against Danilo, viz: two cases for violation of Republic Act No. 9262 or the *Anti-Violence against Women and Their Children Act of 2004* and a petition for annulment—all of which she would withdraw. Subsequently, however, she filed an action for legal separation.[9]

After 30 years of marriage, Danilo filed a petition dated May 25, 2011 before the RTC, praying for the declaration of nullity of his marriage to Josephine on the ground of the latter's psychological incapacity under Article 36 of the Family Code. Docketed as Civil Case No. 11-0205, the petition was consolidated with the legal separation case that Josephine filed, but which was, however, ordered archived by the trial court upon her motion.

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[6] *Id*. at 80. (Emelie's interview)

[7] Records, pp. 553, 559.

[8] *Rollo*, pp. 76-77.

[9] CA *rollo*, pp. 51-52.

Danilo alleged in his petition that barely a few months into their boyfriend-girlfriend relationship, Josephine already exhibited certain negative traits, which he merely trivialized at that time.[10] He eventually discovered his wife to be competitive, domineering, headstrong, and always determined to get what she wanted in the relationship. Their disagreements even over the most trivial matters usually ended up in fights. However, she would suddenly become overly excited and elated that she got her way whenever he gave in to her desires. She enjoyed talking about herself and expected him to give her special treatment, which he tried to satisfy by buying her nice and expensive gifts.[11]

Josephine's negative traits, so Danilo averred, existed prior to their marriage. These include an exaggerated sense of self-importance and sense of entitlement by giving the impression that she was superior to him. She always made the decisions during their marriage, especially when it came to money matters, and made it appear to her children that she was the one in-charge of the family. She ignored and demeaned his abilities and contributions, and complained that she received no help at all from him.[12] She was indifferent and lacked empathy to his plight, as shown by her lack of concern for his distress when she failed to take care of him in the hospital when he was recuperating from two heart surgeries in 2009. During this time, Josephine visited him but did not tend to his needs.[13]

In support of his case, Danilo presented Dr. Natividad A. Dayan (Dr. Dayan), a clinical psychologist, who, in her Psychological Evaluation Report,[14] concluded that both Josephine and Danilo are psychologically incapacitated to fulfill their

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[10] Records, p. 6.

[11] *Rollo*, p. 37.

[12] *Id.* at 48.

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

[14] *Id.* at 60-69.

essential marital obligations of rendering love and respect to each other.

On January 9, 2012, the trial court issued an Order[15] approving the Compromise Agreement[16] dated December 8, 2011 dividing their properties between them. Josephine manifested then that she is no longer presenting controverting evidence and is leaving the issue of nullity of their marriage entirely to the trial court for evaluation.

The Ruling of the RTC

In its Decision dated March 6, 2012, the trial court declared the marriage between Danilo and Josephine void from the start, noting, among others, that the totality of evidence presented show that both parties failed to establish a functional family as they were incapacitated to comply with their marital obligations. In this regard, the RTC gave much credence on Dr. Dayan's assessment of Josephine and Danilo's psychological incapacities. Thus, the trial court ordered them to comply with their compromise agreement respecting their property relations and the matter of support for their common children. The petition for legal separation was, however, dismissed for lack of merit. The dispositive portion of the RTC's Decision reads:

WHEREFORE, finding merit to the petition, judgment is hereby rendered:

1. **DECLARING** null and void ab initio the marriage between DANILO A. PANGASINAN and JOSEPHINE P. PANGASINAN solemnized on DECEMBER 29, 1981 in MAKATI CITY or any other marriages between them, on the ground of the psychological incapacity of respondent and incidentally on the part of petitioner.

2. **ORDERING** both parties to strictly comply with the stipulations of their compromise agreement respecting their property relations and the matter of support for their common children.

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[15] Records, pp. 389-392.

[16] *Id*. at 381-383.

3. **ORDERING** the Local Civil Registrar of Makati City and National Statistics Office to cancel the marriage between the petitioner and the respondent as appearing in the Registry of Marriages.

4. The petition for Legal separation is dismissed for lack of merit.

There are no other issues in this case.

Let copies of this Decision be furnished the Registrars of Makati City and Parañaque City, the Office of the Solicitor General, the Office of the City Prosecutor, Parañaque City and the Office of the National Statistics Office (NSO).

SO ORDERED. (emphasis in the original)

The Republic of the Philippines, through the Office of the Solicitor General (OSG), moved for reconsideration but the trial court denied the motion in its Order[17] dated August 23, 2012.

The Ruling of the CA

Upon review, the CA in the adverted Decision dated March 10, 2014 affirmed the trial court's findings that Josephine, indeed, suffers from psychological incapacity. Citing *Republic v. Court of Appeals*,[18] also known as the *Molina* case, in relation to *Ngo Te v. Yu Te*,[19] the CA ruled that "Josephine was psychologically incapacitated to fulfill the basic duties of marriage which was corroborated in material points by the conclusions of the clinical psychologist. x x x [T]he link between the acts that manifest incapacity and the psychological disorder itself was fully explained."[20]

The motion for the reconsideration of the adverted Decision was likewise denied by the CA in its Resolution dated August 26, 2014. Hence, this petition.

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[17] *Rollo*, pp. 148-151.

[18] G.R. No. 108763, February 13, 1997, 268 SCRA 198.

[19] G.R. No. 161793, February 13, 2009.

[20] *Rollo*, p. 40.

The OSG would have the Court set aside the appealed CA Decision in the submissions that the finding of psychological incapacity on the part of Danilo and Josephine is not in accordance with law and jurisprudence, and the petition filed by Danilo does not specifically allege the complete details of his own psychological incapacity as required by the governing rules.

The OSG contends that Danilo failed to prove that Josephine's psychological incapacity is a medically rooted psychological affliction that was incurable and existing at the inception of their marriage. It further avers that the gravity, antecedence, root cause and incurability of Josephine's psychological incapacity were not established by the evidence of respondent[21] in accordance with the guidelines laid down by the Court in *Molina*. The declaration of nullity of marriage is further assailed as the trial court, as affirmed by the CA, declared the nullity of the parties' marriage based on both of their psychological incapacities.

The sole issue for the resolution of this Court is whether or not the totality of evidence presented warrants, as the courts *a quo* determined, the declaration of nullity of Danilo and Josephine's marriage based on their psychological incapacity under Article 36 of the Family Code.

The petition is meritorious.

"Psychological incapacity," as a ground to nullify marriage under Article 36 of the Family Code, should refer to no less than a mental—not merely physical—incapacity that causes a party to be truly incognitive of the basic marital covenants that concomitantly must be assumed and discharged by the parties to the marriage which, as so expressed in Article 68 of the Code, among others, include their mutual obligations to live together, observe love, respect and fidelity and render help and support.[22]

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[21] *Id*. at 102.

[22] *Republic v. De Gracia*, G.R. No. 171557, February 12, 2014 (citations omitted).

As declared by the Court in *Santos v. Court of Appeals*,[23] psychological incapacity must be characterized by (a) gravity, (b) juridical antecedence, and (c) incurability. Thereafter, in *Molina*,[24] the Court laid down more definitive guidelines in the disposition of psychological incapacity cases, to wit:

(1) Burden of proof to show the nullity of the marriage belongs to the plaintiff.

(2) The root cause of the psychological incapacity must be: (a) medically or clinically identified, (b) alleged in the complaint, (c) sufficiently proven by experts and (d) clearly explained in the decision.

(3) The incapacity must be proven to be existing at "the time of the celebration" of the marriage.

(4) Such incapacity must also be shown to be medically or clinically permanent or incurable.

(5) Such illness must be grave enough to bring about the disability of the party to assume the essential obligations of marriage.

(6) The essential marital obligations must be those embraced by Articles 68 up to 71 of the Family Code as regards the husband and wife, as well as Articles 220, 221 and 225 of the same Code in regard to parents and their children. Such non-complied marital obligation(s) must also be stated in the petition, proven by evidence and included in the text of the decision.

(7) Interpretations given by the National Appellate Matrimonial Tribunal of the Catholic Church in the Philippines, while not controlling or decisive, should be given great respect by our courts.

(8) The trial court must order the prosecuting attorney or fiscal and the Solicitor General to appear as counsel for the state. No decision shall be handed down unless the Solicitor General issues a certification, which will be quoted in the decision, briefly stating therein his reasons for his agreement or opposition, as the case may be, to the petition.[25]

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[23] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

[24] *Supra* note 18.

[25] Cited in *Aurelio v. Aurelio*, G.R. No. 175367, June 6, 2011, 650 SCRA 571.

In sum, a person's psychological incapacity to comply with his or her essential obligations, as the case may be, in marriage must be rooted on a medically or clinically identifiable grave illness that is incurable and shown to have existed at the time of marriage, although the manifestations thereof may only be evident after marriage. Using the abovementioned standards in the present case, the Court finds that the totality of evidence presented is insufficient to establish Josephine and Danilo's psychological incapacity.

The totality of evidence presented fails to establish the psychological incapacity of the parties

In her Affidavit[26] dated October 25, 2011, Dr. Dayan declared that there is sufficient basis to conclude that Josephine is psychologically incapacitated to comply with her essential marital obligations since she is suffering from "301.81 Narcissitic Personality Disorder," as shown by her exaggerated sense of self-importance, sense of entitlement, lack of empathy, arrogant and haughty behaviours, as well as beliefs of being superior and special; and that her psychological incapacity is rooted on a pre-existing personality disorder and shown to be grave, pervasive, incurable, and to have existed at the time of and even prior to the inception of marriage. Her personality disorder, Dr. Dayan surmises, had antecedents that were shown in her experiences of dysfunctional and chaotic family life while growing up. Dr. Dayan concludes that Josephine's personality disorder is shown to be grave, pervasive, and incurable, rendering her incapacitated to assume her marital obligations such as to observe love, respect, and render mutual support.

A careful reading of Dr. Dayan's testimony, however, reveals that it is replete with generalities and wanting in factual bases.

First, Dr. Dayan's findings as to the psychological incapacity of both parties were based on the psychological examination

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[26] Records, pp. 270-278.

conducted on Danilo, as well as from information sourced from him, his sister, Emelie Pangasinan Gatus (Gatus), and the couple's son, Juan Carlo "Jay" Pangasinan (Jay). As pointed out by Josephine's counsel, Atty. Ferdinand Raymund Navarro, Dr. Dayan gave the following responses to the questions during her cross-examination as indicated:

Q: You mentioned in your Psychological Report that the respondent has an exaggerated sense of self-importance?

A: Yes, sir.

Q: What specific instance or instances made you come to such a conclusion, madam witness?

A: For the reason that during the marriage, she has always maintained a very dominant decision. She has always been arrogant and haughty, she was always contemptuous in her behavior towards the petitioner.

Q: And these instances that you referred to, what was your source, madam witness?

A: My sources are the petitioner, I also was able to interview other people, the daughter and sister of the petitioner. I was also able to interview the respondent, sir.

Q: Did the respondent, during your interview, specifically state or referred to those instances you mentioned earlier?

A: She maintained that she had difficulties in the marriage because both of them are not doing voluntary make up?

Q: But did she refer to any instance showing what you maintain as exaggerated sense of self importance?

A: She did not put it that way but she accepted that fact that she was feisty and she has problems relating with the petitioner, sir.

Q: So, the source of your findings regarding these particular characteristics is only based on the manifestations of your other sources aside from the respondent?

A: Yes, sir.[27]

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[27] TSN, October 27, 2011, pp. 13-16.

While Dr. Dayan testified that she was able to interview Josephine, the said interview was conducted only through a phone call.[28] No explanation was proffered as to how Dr. Dayan ascertained the identity of the interviewee nor as to the measures undertaken in ascertaining her identity. Thus, she could not have conclusively established that the person being interviewed was Josephine herself. This greatly undermines the credibility of the results of the psychological evaluation of Josephine. Dr. Dayan, in effect, relied only on the information given by Danilo, Gatus, and Jay. Dr. Dayan's testimony on Josephine's psychological profile did not prove the antecedence and root cause of her psychological incapacity.

It is true that in petitions for nullification of marriages, it is not necessary that a physician examine the person to be declared psychologically incapacitated. What is important is the presence of evidence that can adequately establish the party's psychological condition. If the totality of evidence presented is enough to sustain a finding of psychological incapacity, then actual medical examination of the person concerned need not be resorted to.[29] However, the totality of evidence must still prove the gravity, juridical antecedence and incurability of the alleged psychological incapacity.[30] In addition to the foregoing, the psychological illness and its root cause must be proven to exist from the inception of the marriage.[31]

In this case, there is no such reliable and independent evidence establishing Josephine's psychological condition and its associations in her early life. Aside from what Danilo relayed to Dr. Dayan, no other evidence supports his claim and Dr. Dayan's finding that the root cause of Josephine's personality

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[28] *Rollo*, p. 103.

[29] *Marcos v. Marcos*, G.R. No. 136490, October 19, 2000, 343 SCRA 755, 764.

[30] *Bier v. Bier*, G.R. No. 173294, February 27, 2008, 547 SCRA 123.

[31] *Marable v. Marable*, G.R. No. 178741, January 17, 2011, 639 SCRA 557.

disorder antedated the marriage since Emelie and Jay's testimonies covered circumstances that transpired **after** the marriage.

Second, in view of the insufficiency of factual bases of and generalizations in her Psychological Evaluation Report, Dr. Dayan's testimony is inadequate to establish concretely the correlation between Josephine's personality and her inability to comply with her essential marital obligations to Danilo. Dr. Dayan merely made, as it were, a general assessment and conclusion as to the gravity and pervasiveness of Josephine's condition without sufficiently explaining how she arrived at such a conclusion:

> Q28. Can you please explain the nature of the Respondent's personality disorder?
>
> A28. The nature is severe, as it is pervasive, affecting all areas of her life.
>
> x x x x x x x x x
>
> Q.31 You said that the Respondent's psychological incapacity is grave, what do you mean by that?
>
> A31. It is so serious that the Respondent is unable to perform many, if not all, her marital obligations.[32]

The stringency by which the Court assesses the sufficiency of psychological evaluation reports is necessitated by the pronouncement in our Constitution that marriage is an inviolable institution protected by the State. It cannot be dissolved at the whim of the parties, especially where the pieces of evidence presented are grossly deficient to show the juridical antecedence, gravity and incurability of the condition of the party alleged to be psychologically incapacitated to assume and perform the essential marital duties.[33] Any doubt should be resolved in

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[32] Records, p. 276, Affidavit dated October 25, 2011.

[33] *Agraviador v. Agraviador*, G.R. No. 170729, December 8, 2010.

favor of its existence and continuation and against its dissolution and nullity.[34]

Danilo's characterization of his wife, without more, is insufficient to constitute psychological incapacity. At most, it merely establishes that their personalities are different and that their frequent arguments and differences in handling finances and managing their business affairs were money-related. No less than Danilo's own sister, Gatus, narrated during her interview with Dr. Dayan that the couple's problems started when Danilo's business began to slow down and he began to have difficulty supporting his family at the same level they were used to.[35] Thus, it appears that her "incapacity" surfaced only in the latter years of marriage when they experienced difficulties in their business ventures.

It has been held that mere showing of "irreconcilable differences" and "conflicting personalities" does not constitute psychological incapacity nor does failure of the parties to meet their responsibilities and duties as married persons.[36] These differences do not rise to the level of psychological incapacity under Article 36 of the Family Code and are not manifestations thereof which may be a ground for declaring their marriage void. If at all, these are difficulties that couples ordinarily deal with in the course of their marriage.

In *Marable v. Marable*, this Court stressed that psychological incapacity must be more than just a "difficulty," "refusal" or "neglect" in the performance of some marital obligations. Rather, it is essential that the concerned party was incapable of doing so, due to some psychological illness existing at the time of the celebration of the marriage.[37] The intendment of the law

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[34] *Republic v. Court of Appeals*, *supra* note 18.

[35] *Rollo*, p. 80.

[36] *Paz v. Paz*, G.R. No. 166579, February 18, 2010 (citations omitted); *Alcazar v. Alcazar*, G.R. No. 174451, October 13, 2009; *Republic v. Cabantug-Baguio*, G.R. No. 171042, June 30, 2008 (citations omitted).

[37] *Supra* note 31.

has been to confine the meaning of "psychological incapacity" to the most serious cases of personality disorders clearly demonstrative of an utter insensitivity or inability to give meaning and significance to the marriage.[38] Josephine's insensitivity to Danilo's plight translates to a mere refusal on her part to perform her duties as his wife brought about by their arguments over their finances, and not an outright incapability to do so.

Danilo's psychological incapacity cannot be a basis of the RTC's declaration of the invalidity of the marriage

Neither can the marriage be nullified on the basis of Danilo's supposed psychological incapacity. While Danilo was likewise diagnosed to be suffering from "301.9 Personality Disorder Not Otherwise Specified, presenting symptoms of Passive-Aggressive and Avoidant Personality Disorder,"[39] which the RTC considered in declaring the couple's marriage null and void, Danilo anchored his petition on the psychological incapacity of Josephine only. Section 2 of the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages* specifically states:

Section 2. Petition for declaration of absolute nullity of void marriages.

(a) Who may file. – A petition for declaration of absolute nullity of void marriage may be filed solely by the husband or the wife. (n)

(b) Where to file. – The petition shall be filed in the Family Court.

(c) Imprescriptibility of action or defense. - An action or defense for the declaration of absolute nullity of void marriage shall not prescribe.

(d) What to allege. – **A petition under Article 36 of the Family Code shall specifically allege the complete facts showing that either**

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[38] *Republic v. Cuison-Melgar*, G.R. No. 139676, March 31, 2006; citing *Santos v. Court of Appeals*, *supra* note 23.

[39] *Rollo*, p. 68.

or both parties were psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity becomes manifest only after its celebration.

The complete facts should allege the physical manifestations, if any, as are indicative of psychological incapacity at the time of the celebration of the marriage, but expert opinion need not be alleged. (emphasis supplied)

Records show that Danilo's petition is hinged primarily on his allegation that Josephine is psychologically incapacitated to fulfil her marital obligations. Notably, Danilo's testimony and the information gathered from Dr. Dayan's interview with Gatus and Jay are inclined to prove Josephine's incapacity. As in Josephine's case, the records are bereft of any independent evidence nor allegation of facts pointing to the psychological incapacity of Danilo. Therefore, in addition to Danilo's failure to allege the complete facts showing his incapacity to comply with his essential marital obligations to Josephine, he likewise failed to prove his wife's incapacity by preponderance of evidence.

Finally, the Court notes the Compromise Agreement dated December 8, 2011 that Danilo and Josephine executed respecting the division of their properties and support of their common children. Considering that the parties may opt to divide their properties by judicial order under Art. 134[40] of the Family Code, the Court upholds the validity of the Compromise Agreement. However, par. 3[41] thereof providing for the cessation of financial support in case the parties' marriage is declared null and void is inoperative since the marriage of the parties subsists.

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[40] Art. 134. In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place except by judicial order. Such judicial separation of property may either be voluntary or for sufficient cause.

[41] "3. The parties agreed that once a decree of nullity of marriage is issued all marital obligations, including the giving of financial support for each other, shall cease following this approval by the court of the settlement/separation of property relations."

The Court is not unmindful of the couple's marital predicament. Nevertheless, the Court has no choice but to apply the applicable law and jurisprudence accordingly, if it must be true to its mission under the rule of law. The Court's first and foremost duty is to apply the law no matter how harsh it may be.

WHEREFORE, the petition is **GRANTED**. Accordingly, the assailed Decision of the Court of Appeals in CA-G.R. CV No. 99739 is **SET ASIDE**. The basic petition for the declaration of nullity of marriage commenced by Danilo A. Pangasinan in Civil Case No. 11-0205 is **DENIED**. The parties are enjoined to comply with the Compromise Agreement dated December 8, 2011, excluding paragraph 3 thereof which is declared to be inoperative and without legal force and effect.

SO ORDERED.

Peralta, Perez, and *Reyes, JJ.,* concur.

Brion,[*] *J.,* on leave.

THIRD DIVISION

[G.R. No. 214450. August 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-apellee, vs.* **MANUEL PRADO *y* MARASIGAN**, *acussed-apellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ABSENT ANY SHOWING THAT THE TRIAL COURT'S FINDINGS OF FACTS WERE TAINTED WITH ARBITRARINESS OR THAT IT OVERLOOKED OR MISAPPLIED SOME FACTS OR CIRCUMSTANCES

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[*] Additional Member per Raffle dated July 13, 2016.

OF SIGNIFICANCE AND VALUE, OR ITS CALIBRATION OF CREDIBILITY WAS FLAWED, THE APPELLATE COURT IS BOUND BY ITS ASSESSMENT.— Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination. Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

2. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS; MET.—** In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established by the prosecution: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide. Our review of the records convinces us that these elements were clearly met.

3. **REMEDIAL LAW; EVIDENCE; DEFENSE OF DENIAL; CANNOT PREVAIL OVER THE EYEWITNESS' POSITIVE IDENTIFICATION OF THE ACCUSED-APPELLANT AS ONE OF THE PERPETRATORS OF THE CRIME, AS DENIAL IS A NEGATIVE AND SELF-SERVING EVIDENCE UNDESERVING OF WEIGHT IN LAW, IF NOT SUBSTANTIATED BY CLEAR AND CONVINCING EVIDENCE.—** We uphold appellant's conviction in Criminal Case No. 6898-99-C for Murder and likewise his conviction in Criminal Case No. 6899-99-C for Attempted Murder. The prosecution eyewitness SPO1 Saludes positively identified appellant as one of the persons responsible for firing at their team, killing PO1 Arato and gravely wounding him. The Court finds no reason to disbelieve this credible and straightforward testimony. Evidently, all the four (4) men, including appellant, were armed, had a common intent and purpose and performed conspiratorial acts to fire at the police officers to finish them off. We are not persuaded by the appellant's defense of denial as this cannot prevail over the eyewitness' positive identification of him as one of the

perpetrators of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.

4. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; APPRECIATED.— The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victims was sudden and unexpected which effectively deprived them of the chance to defend themselves or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.

5. ID.; REVISED PENAL CODE; MURDER; PROPER PENALTY.— In Criminal Case No. 6898-1999-C, we affirm the penalty *of reclusion perpetua* imposed upon appellant. Under Article 248 of the RPC, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime.

6. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The Court likewise affirms the award of actual damages but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.

7. ID.; ID.; ATTEMPTED MURDER; PROPER PENALTY.— In Criminal Case No. 6899-99-C, Article 51 of the RPC states that the corresponding penalty for attempted murder shall be two degrees lower than that prescribed for consummated murder under Article 248, that is, applying the Indeterminate Sentence Law (ISLAW), the minimum penalty should be taken from any of the periods of *prision correccional* and the maximum penalty should be taken from *prision mayor* in its medium period. x x x. Thus, appellant should serve an indeterminate sentence ranging from two (2) years, four (4) months and one (1) day of *prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— The Court increases the award of temperate

damages to ₱50,000.00 pursuant to jurisprudence. The award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages. Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.

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.*:

This is an appeal assailing the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 05566 dated 9 September 2013 which dismissed the appeal of appellant Manuel Prado y Marasigan and affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of the City of Calamba, Branch 36, in Criminal Cases Nos. 6898-1999-C and 6899-1999-C, which found appellant guilty beyond reasonable doubt of the crime of Murder.

Appellant, together with three (3) other co-accused, was charged before the RTC, with murder and frustrated murder as follows:

CRIMINAL CASE No. 6898-99-C

That on or about April 15, 1999 at Industrial Site, Brgy. Canlubang, Municipality of Calamba, Province of Laguna and within the

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[1] *Rollo*, pp. 1A-10; Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles concurring.

[2] Records (Crim. Case No. 6898-99-C), pp. 89-101; Presided by Presiding Judge Medel Arnaldo B. Belen.

jurisdiction of this Honorable Court, the above-named accused, with intent to kill conspiring, confederating and mutually helping one another while conveniently armed with superior weapon, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon one PO1 WEDDY ARATO by shooting him on the different parts of his body, thereby inflicting upon him serious/mortal gunshot wounds which directly caused his death, to the damage and prejudice of the victim's surviving heirs.

That in the commission of the crime, the qualifying circumstances of evident premeditation and treachery were in attendant (sic).[3]

CRIMINAL CASE No. 6899-99-C

That on or about April 15, 1999 at Industrial Site, Brgy. Canlubang, Municipality of Calamba, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, with treachery and evident premeditation with intent to kill conspiring, confederating and mutually helping one another did then and there wilfully, unlawfully and feloniosly (sic) attack, assault and employ personal violence upon one PO1 PELAGIO SALUDES by then and there shooting the latter with long and short firearms on his body, thereby inflicting upon him serious/mortal gunshot, thus accused performed all the acts of execution which could have produced the crime of Murder as a consequence, but nevertheless did not produce it by reason of some causes other than his spontaneous desistance, that is the timely and able medical assistance redered (sic) to the said victim which prevented his death.[4]

During arraignment, appellant pleaded not guilty to the crimes charged. The other accused remained at large. Trial on the merits thereafter ensued.

The prosecution presented Senior Police Officer 1 Pelagio Saludes (SPO1 Saludes), Panfilo Arato (Panfilo) and Dr. Roy Camarillo as witnesses.

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[3] Records (Crim. Case No. 6898-99-C), p. 13.

[4] Records (Crim. Case No. 6899-99-C), p. 14.

The prosecution established that on 15 April 1999, SPO1 Saludes and other policemen, including the deceased Police Officer 1 Weddy Arato (PO1 Arato), received information about an illegal gambling operation at Ciba-Geigy, Canlubang, Laguna. There were many people at the site when the team reached the place. As the team was about to ask questions, four (4) men equipped with short and long firearms suddenly appeared and fired upon them, instantly killing PO1 Arato and hitting SPO1 Saludes. SPO1 Saludes identified appellant in open court as one of the four (4) men; appellant had been outfitted with a short firearm that fateful day.[5]

The testimony of Panfilo, the deceased victim's father, was dispensed with after the defense stipulated, among others, on the medical and funeral expenses the Arato family had incurred and the deceased officer's annual salary at the time of his death.[6]

Appellant interposed the defenses of denial and alibi. He asserted that this is a case of mistaken identity and that he had been in Leyte in 2008 at the time of his arrest.[7] His sister, Teresa Sartiso, sought to support appellant's defenses but had no documentary proof therefor.[8]

After trial, the RTC on 7 February 2012 rendered the assailed decision disposing as follows:

WHEREFORE, the [c]ourt finds Accused MANUEL PRADO y Marasigan: *a)* in Criminal Case No. 6898-1999-C GUILTY of MURDER and imposed upon him the penalty of *RECLUSION PERPETUA* and for him to pay the heirs of WEDDY ARATO the following sums of money: ₱112,000.00 for and as actual damages; ₱75,000.00 for and as civil indemnity for death; ₱50,000.00 for and as moral damages; and ₱50,000.00 for and as exemplary damages; and *(b)* in Criminal Case No. 6899-1999-C Accused MANUEL

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[5] TSN, 19 August 2008, pp. 4-13.

[6] TSN, 2 September 2008, pp. 2-8.

[7] TSN, 5 February 2009, pp. 2-5.

[8] TSN, 19 February 2009, pp. 3-7.

PRADO y Marasigan GUILTY of ATTEMPTED MURDER and imposed upon him the penalty of indeterminate prison term of two (2) years, four (4) months and ten (10) days of *PRISION CORRECCIONAL* medium as minimum, to eight (8) years to two (2) months and twenty (20) days of *PRISION MAYOR* medium, as maximum and for him to pay SPO1 Pelagio Saludes the following sums of money: ₱50,000.00 for and as moral damages; and ₱30,000.00 for and as exemplary damages.

Until this [c]ourt acquires jurisdiction over the accused Rodante Prado, Rodelio Prado and "John Doe," who all remains at-large, the criminal complaints against them in these cases are "ARCHIVED."[9]

The Court of Appeals found no reason to disturb the findings of the RTC and upheld its ruling but with modification on the amount of damages awarded. The appellate court found the eyewitness account of SPO1 Saludes credible, straightforward and reliable and upheld the latter's positive identification of appellant as one of the perpetrators. The Court of Appeals likewise sustained the trial court's findings of conspiracy among the assailants and the presence of the qualifying circumstance of treachery in the killing and wounding of the police officers. The Court of Appeals thus disposed:

WHEREFORE, in light of all the foregoing, the February 7, 2012 Decision of the Regional Trial Court of Calamba City, Laguna, Branch 36, is ***AFFIRMED*** with the following ***MODIFICATIONS:***

I. In Criminal Case No. 6898-99-C (for Murder), the award of **exemplary damages** is **REDUCED** from ₱50,000.00 to **₱30,000.00.**

II. In Criminal Case No. 6899-99-C (for Attempted Murder), the award of **moral damages** is **REDUCED** from ₱50,000.00 to **₱40,000.00. Moreover, accused-appellant is ORDERED to pay the additional awards of civil indemnity in the amount of ₱25,000.00 and temperate damages, also in the amount of ₱25,000.00.**

III. In all other respects, the assailed Decision is ***AFFIRMED.***[10] (Emphasis in the original)

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[9] Records (Crim. Case No. 6898-99-C), p. 101.

[10] *Rollo*, p. 10.

Now before the Court for final review, we affirm appellant's conviction.

Well-settled in our jurisprudence is the rule that findings of the trial court on the credibility of witnesses deserve great weight, as the trial judge is in the best position to assess the credibility of the witnesses, and has the unique opportunity to observe the witness first hand and note his demeanor, conduct and attitude under gruelling examination.[11] Absent any showing that the trial court's findings of facts were tainted with arbitrariness or that it overlooked or misapplied some facts or circumstances of significance and value, or its calibration of credibility was flawed, the appellate court is bound by its assessment.

In the prosecution of the crime of murder as defined in Article 248 of the Revised Penal Code (RPC), the following elements must be established by the prosecution: (1) that a person was killed; (2) that the accused killed that person; (3) that the killing was attended by treachery; and (4) that the killing is not infanticide or parricide.[12]

Our review of the records convinces us that these elements were clearly met. We uphold appellant's conviction in Criminal Case No. 6898-99-C for Murder and likewise his conviction in Criminal Case No. 6899-99-C for Attempted Murder. The prosecution eyewitness SPO1 Saludes positively identified appellant as one of the persons responsible for firing at their team, killing PO1 Arato and gravely wounding him. The Court finds no reason to disbelieve this credible and straightforward testimony. Evidently, all the four (4) men, including appellant, were armed, had a common intent and purpose and performed conspiratorial acts to fire at the police officers to finish them off. We are not persuaded by the appellant's defense of denial as this cannot prevail over the eyewitness' positive identification

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[11] *People v. Rivera*, 458 Phil. 856, 873 (2003) cited in *People v. Sevillano*, G.R. 200800, 9 February 2015.

[12] *People v. Sevillano*, G.R. 200800, 9 February 2015 citing *People v. Sameniano*, 596 Phil. 916, 928 (2009).

of him as one of the perpetrators of the crime. Denial, like alibi, if not substantiated by clear and convincing evidence is negative and self-serving evidence undeserving of weight in law.[13]

The prosecution ably established the presence of the element of treachery as a qualifying circumstance. The shooting of the unsuspecting victims was sudden and unexpected which effectively deprived them of the chance to defend themselves or to repel the aggression, insuring the commission of the crime without risk to the aggressor and without any provocation on the part of the victim.

In fine, the Court finds no error in the conviction of appellant.

In Criminal Case No. 6898-1999-C, we affirm the penalty of *reclusion perpetua* imposed upon appellant. Under Article 248 of the RPC, as amended, the crime of murder qualified by treachery is penalized with *reclusion perpetua* to death. The lower courts were correct in imposing the penalty of *reclusion perpetua* in the absence of any aggravating and mitigating circumstances that attended the commission of the crime. The Court likewise affirms the award of actual damages but the award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages.[14]

In Criminal Case No. 6899-99-C, Article 51 of the RPC states that the corresponding penalty for attempted murder shall be two degrees lower than that prescribed for consummated murder under Article 248, that is, applying the Indeterminate Sentence Law (ISLAW), the minimum penalty should be taken from any of the periods of *prision correccional* and the maximum penalty should be taken from *prision mayor* in its medium period.[15] Section 1 of the ISLAW provides:

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[13] *Malana, et al. v. People*, 573 Phil. 39, 53 (2008).

[14] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

[15] *People v. Gutierrez*, 625 Phil. 471, 483 (2010).

[T]he court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the Revised Penal Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense.

Thus, appellant should serve an indeterminate sentence ranging from two (2) years, four (4) months and one (1) day of *prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor* in its medium period, as maximum.

The Court increases the award of temperate damages to ₱50,000.00 pursuant to jurisprudence.[16] The award of the other damages should be modified, in accordance with prevailing jurisprudence, as follows: ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, and ₱25,000.00 as exemplary damages.[17]

Further, all the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[18]

WHEREFORE, premises considered, the Decision dated 09 September 2013 of the Court of Appeals, Sixteenth Division, in CA-G.R. CR –H.C. No. 05566, finding appellant Manuel Prado y Marasigan guilty of murder in Criminal Case No. 6898-99-C and of attempted murder in Criminal Case No. 6899-99-C is **AFFIRMED with MODIFICATIONS.** In **Criminal Case No. 6898-99-C**, appellant is **ORDERED** to pay the private offended party as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In **Criminal Case No. 6899-99-C**, appellant shall **SUFFER** the indeterminate sentence ranging from two (2) years, four (4) months and one (1) day of *prision correccional* as

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[16] *People v. Jugueta*, *supra* note 14.

[17] *Id*.

[18] *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.

minimum, to eight (8) years and one (1) day of *prision mayor* as maximum and pay the offended party as follows: ₱25,000.00 as civil indemnity, ₱25,000.00 as moral damages, ₱25,000.00 as exemplary damages and ₱50,000.00 as temperate damages.

He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (*Chairperson), Peralta, Reyes,* and *Caguioa,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 218086. August 10, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHARLIE BALISONG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE WITH HOMICIDE; ELEMENTS; PRESENT.— The felony of rape with homicide is a special complex crime, that is, two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse. It is penalized under Articles 266-A and 266-B of the Revised Penal Code x x x. Thus, in the special complex crime of rape with homicide, the following elements must concur: (1) the

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[*] Additional Member per Raffle dated 8 August 2016.

appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman. Accordingly, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints. In the instant case, the Court concurs with the rulings of both the trial and appellate courts in categorically finding the presence of the foregoing elements.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE MINOR INCONSISTENCY IN THE WITNESS' TESTIMONY DOES NOT IN ANY WAY AFFECT HIS CREDIBILITY, ESPECIALLY THAT THERE ARE OTHER PIECES OF EVIDENCE THAT STRONGLY CORROBORATE HIS TESTIMONY LIKE THE FINDING OF THE MEDICO LEGAL.— From the x x x testimony, it is clear, x x x that BBB was certain that rape was committed by appellant against AAA. The fact that BBB stated at one time that appellant inserted his penis inside AAA's anus does not necessarily belie BBB's testimony that as the trial court observed, an 8-year-old boy is not expected to distinguish an anus from a vagina. Moreover, the witness had stated several times that it was the vagina where the penis was inserted and that appellant was on top of AAA. The minor inconsistency in his testimony does not in any way affect AAA's credibility, especially that there are other pieces of evidence that strongly corroborate his testimony like the finding of the medico-legal.

3. ID.; ID.; ID.; ABSENT ANY SUBSTANTIAL REASON WHICH WOULD JUSTIFY THE REVERSAL OF THE TRIAL COURT'S ASSESSMENTS AND CONCLUSIONS, THE REVIEWING COURT IS GENERALLY BOUND BY THE FORMER'S FINDINGS, PARTICULARLY WHEN NO SIGNIFICANT FACTS AND CIRCUMSTANCES ARE SHOWN TO HAVE BEEN OVERLOOKED OR DISREGARDED WHICH WHEN CONSIDERED WOULD HAVE AFFECTED THE OUTCOME OF THE CASE.— Time and again, the Court has ruled that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed

that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts. Absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of the case. This rule is even more stringently applied if the appellate court concurred with the trial court.

4. **ID.; ID.; DEFENSES OF ALIBI AND DENIAL; INHERENTLY WEAK AND EASILY FABRICATED, AS SUCH, THEY ARE GENERALLY REJECTED FOR THE POSITIVE IDENTIFICATION OF THE ACCUSED, WITHOUT ANY SHOWING OF ILL MOTIVE ON THE PART OF THE EYEWITNESS TESTIFYING, SHOULD PREVAIL OVER THE ALIBI AND DENIAL OF THE APPELLANT.—** [T]o refute the clear and convincing testimonies presented by the prosecution, appellant merely interposed the defenses of denial and alibi. x x x. No jurisprudence in criminal law is more settled than that alibi and denial, the most common defenses, are inherently weak and easily fabricated. As such, they are generally rejected for the positive identification of the accused, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant. On the one hand, an accused's bare denial cannot generally be held to prevail when raised against the complainant's direct, positive and categorical testimony. On the other hand, unless the accused establishes his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime, his acquittal cannot be properly justified. Indeed, when alibi is unsubstantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.

5. **CRIMINAL LAW; REVISED PENAL CODE; RAPE WITH HOMICIDE; THE ABSENCE OF SPERMATOZOA WOULD NOT EXONERATE APPELLANT FROM THE CRIME, AS THE PRESENCE OR ABSENCE OF SPERMATOZOA IS NOT AN ELEMENT OF RAPE.—** As to appellant's argument that assuming without necessarily admitting that he is responsible for the death of AAA, he should

only be liable for homicide, due to the fact that the sexual assault was not proven beyond reasonable doubt, the Court resolves to deny the same. As expressly stated by the trial court, the medical certificate issued was an off-shoot of the post-mortem examination conducted by Dr. Calucin in the early morning following the rape which shows the presence of spermatozoa in the vaginal canal of AAA. Nevertheless, even granting the absence of the same would not exonerate appellant from the crime charged simply because the presence or absence of spermatozoa is not an element of rape.

6. ID.; ID.; ID.; PROPER PENALTY.— In the absence, therefore, of any showing that either the RTC or the CA erred in their findings of fact, especially as to the credibility of the prosecution witnesses, the Court finds no reason to disturb the same. As clearly proved by the prosecution, appellant herein succeeded in accomplishing his sexual perversion by having carnal knowledge of the mother of his own common-law wife by means of force, threats, and intimidation, in the very view of his own stepson, and thereafter strangling her to death. Since the records clearly evince the guilt of appellant in the commission of his horrific acts, the Court deems it necessary to penalize the same with *reclusion perpetua,* which should have been death, had it not been for the passage of RA No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" prohibiting the imposition thereof. Nevertheless, let it be noted that appellant shall not be eligible for parole by virtue of said Act.

7. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.—There is, however, a need to modify the amounts of damages awarded. Hence, pursuant to prevailing jurisprudence, both awards of moral and exemplary damages are increased to ₱100,000.00 each. Moreover, said amounts shall earn interest at the rate of 6% per annum from date of finality of this judgment until fully paid.

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

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated October 17, 2014 of the Court Appeals (*CA*) in CA-G.R. CR-HC No. 06252, which affirmed the Decision[2] dated January 21, 2013 of the Regional Trial Court (*RTC*), Branch 45, Masbate City, in Criminal Case No. 14968 for rape with homicide.

The antecedent facts are as follows:

In an Information[3] dated September 5, 2011, accused-appellant Charlie Balisong was charged with the special complex crime of rape with homicide, committed by wilfully, unlawfully, and feloniously having sexual intercourse with AAA,[4] the 62-year-old mother of his common-law wife, against her will and by means of force and intimidation, and thereafter choking her to death. The accusatory portion of said Information reads:

> That on or about September 3, 2011, in the evening thereof, at Brgy. Poblacion East, Municipality of Milagros, Province of Masbate, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, and intimidation, did then and there, willfully, unlawfully, and feloniously succeed in having sexual intercourse with the herein complainant, AAA, a 62-year-old woman, and thereafter choked to death the said victim, against her will.

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 2-17.

[2] Penned by Judge Manuel L. Sese; CA *rollo*, pp. 51-60.

[3] *Rollo*, p. 3.

[4] In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703, 709 (2006), citing Rule on Violence Against Women and their Children, Sec. 40, Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real name of the rape victim will not be disclosed.

CONTRARY TO LAW.[5]

Upon arraignment, appellant pleaded not guilty to the offense charged.[6] Thereafter, during trial, the prosecution presented the testimonies of BBB, the 8-year-old stepson of appellant and grandson of AAA, and Dr. Irene Grace Calucin, the Municipal Health Officer of Milagros, Masbate.[7]

BBB testified that in the evening of September 3, 2011, he and his grandmother, AAA, were sleeping in AAA's house when appellant, his stepfather, suddenly entered the house and undressed himself and AAA. AAA shouted for help but appellant did not stop and continued to choke her. When AAA became unconscious, appellant went on top of her and proceeded to rape her. Thereafter, appellant dragged her lifeless body and threw her into a nearby river. BBB was unable to shout for help because he was afraid of appellant. The following morning, he reported the incident to his mother, DDD, and grandfather, EEE, in the presence of appellant, who denied the same.[8] Thereafter, DDD and EEE rushed to the river and found AAA's lifeless body, which was naked from the waist-up, with her lower garments below her knees.[9] That same day, they reported the incident to the Milagros Municipal Police Station of Masbate and brought the cadaver to the Office of the Municipal Health Officer where the autopsy thereon was performed.[10]

BBB's testimony was corroborated by the testimony of Dr. Calucin, who conducted the post-mortem examination on AAA's body and prepared the corresponding Necropsy Report thereon revealing the physical injuries sustained by AAA, such as abrasions on her throat, neck, breasts, arms, and legs. The

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[5] *Rollo*, p. 3.

[6] *Id.*

[7] *Id.* at 3-4.

[8] *Id.* at 4.

[9] CA *rollo*, p. 75.

[10] *Id.* at 76.

report likewise identified choking and drowning as AAA's cause of death.[11]

In contrast, the defense countered by presenting the lone testimony of appellant who essentially denied the charges against him. He averred that at the time of the alleged incident, he was at his house, about five hundred (500) meters away from the house where AAA and BBB were. He claimed that he could not have committed the crime for he was in the company of his common-law wife, DDD, and his father-in-law, EEE, conversing with them until midnight. Appellant also argued that the rape charge was contradicted by the post-mortem examination which stated that there were no signs of sexual assault. Thus, even if he may be held liable for the death of AAA, the fact that the sexual assault was not proven means he can only be convicted of homicide.[12]

On January 21, 2013, the RTC found appellant guilty beyond reasonable doubt of the crime of rape and rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, the prosecution having been able to prove the guilt of the accused beyond reasonable doubt of the crime of rape with homicide, a special complex crime provided under Article 266-B, paragraph 5 of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353, the accused, CHARLIE BALISONG, is hereby sentenced to suffer the penalty of RECLUSION PERPETUA. Accused is further ordered to indemnify the heirs of the victim the amount of one hundred thousand (₱100,000.00) pesos as civil indemnity; fifty thousand (₱50,000.00) pesos as moral damages and thirty thousand (₱30,000.00) pesos as exemplary damages.
>
> Costs against the accused.

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[11] *Rollo,* pp. 4-5.

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

SO ORDERED.[13]

The RTC gave credence to the fact that BBB testified in a categorical, candid, spontaneous and frank manner regarding the rape and the killing of AAA. He vividly recognized appellant, whose familiarity as his stepfather was unassailable.[14] The fact that BBB stated that appellant placed himself on top of AAA and inserted his penis inside AAA's anus does not make BBB's testimony untrue for he is not expected to distinguish an anus from a vagina, being merely eight (8) years old. In fact, the trial court found the innocent mistake to even strengthen his credibility, showing that BBB's testimony was natural and uncoached.[15] Moreover, said testimony was corroborated by the medical certificate issued as an off-shoot of the post-mortem examination conducted by Dr. Calucin in the early morning following the rape which shows the presence of spermatozoa in the vaginal canal of AAA. Thus, while such presence is not an essential element of rape, it can be taken as corroborative evidence to prove that the victim was subjected to sexual assault or had engaged in a sexual intercourse before the examination. As to the killing of AAA, the RTC found that BBB's statement that appellant strangled AAA to death was sufficiently confirmed by the medical findings showing that AAA's neck bore marks of strangulations.

On appeal, the CA affirmed the RTC Decision finding that all the following elements of the special complex crime of rape with homicide are present herein: (1) the accused had carnal knowledge of a woman; (2) the carnal knowledge of the woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by mean of force, threat or intimidation, the accused killed the woman.[16]

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[13] CA *rollo*, pp. 59-60.

[14] *Id.* at 54-55.

[15] *Id.* at 56.

[16] *Rollo*, p. 7.

First of all, the appellate court found that BBB positively identified appellant as the person who raped his grandmother. Jurisprudence dictates that testimonies of a child are normally given full weight and credit for youth and immaturity are generally badges of truth and sincerity, especially in the absence of indubitable proof that the accused could not have committed the rape.[17] Second, the Necropsy Report reveals that the physical injuries sustained by the victim corroborates BBB's testimony that appellant was choking his grandmother to death. His testimony on how appellant entered AAA's house, undressed her, raped her, choked and later killed her was clear, categorical, straightforward, and free of any serious flaw.[18] The evidentiary value of such testimony is strengthened by the fact that there is no evidence to show any improper motive on BBB's part to falsely testify against appellant to implicate him in the commission of so heinous a crime as rape with homicide.

The appellate court added that appellant's bare denial and alibi can hardly overcome BBB's positive declaration of the identity and involvement of appellant in the crime attributed to him.[19] It noted that his contention that he was in his house conversing with his father-in-law, EEE, was actually belied by the fact that it was EEE himself who requested the police to enter the commission of the crime in the police blotter. Equally important was the fact that since appellant was merely 500 meters away from the scene of the crime, as he admitted, it was not physically impossible for him to have been at the scene of the crime at the time of its commission.

As to appellant's claim that the post-mortem examination found no trace of sexual assault on the victim, the CA held that the absence of fresh lacerations does not preclude the finding of rape, as neither hymenal rupture, vaginal laceration or genital injury is an element of rape. Citing several jurisprudential

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[17] *Id*. at 10.

[18] *Id*. at 12.

[19] *Id*. at 13.

teachings, the appellate court ruled that a medical examination is merely corroborative in character and not an indispensable element for conviction in rape for what is important is that the testimony of the eyewitness about the incident be clear and credible.[20]

As for the imposable penalty of *reclusion perpetua*, the CA noted that the same should carry the qualification that appellant shall not be eligible for parole as provided for by Republic Act (RA) No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines."[21] In addition, in view of prevailing jurisprudence, the award of ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages should be increased to ₱75,000.00 and ₱50,000.00 respectively.[22]

Consequently, appellant filed a Notice of Appeal[23] on November 6, 2014. Thereafter, in a Resolution[24] dated June 22, 2015, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

THE COURT OF APPEALS ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[25]

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[20] *Id*. at 15.

[21] *Id*.

[22] *Id*. at 16.

[23] *Id*. at 18.

[24] *Id*. at 23.

[25] *CA rollo*, p. 42.

Appellant essentially argues that he should not be convicted of the crime charged herein because of the prosecution's failure to prove the elements thereof, particularly, that he succeeded in having carnal knowledge of AAA. According to him, the findings of Dr. Calucin did not indicate the presence of any sexual assault. Thus, assuming without necessarily admitting that appellant is responsible for the death of AAA, he should only be liable for homicide, due to the fact that the sexual assault was not proven beyond reasonable doubt.[26]

We affirm appellant's conviction, with modification as to the award of damages.

The felony of rape with homicide is a special complex crime, that is, two or more crimes that the law treats as a single indivisible and unique offense for being the product of a single criminal impulse.[27] It is penalized under Articles 266-A and 266-B of the Revised Penal Code as follows:

Art. 266-A. Rape, When and How Committed. – Rape is committed –

1. By a man who shall have **carnal knowledge** of a woman under any of the following circumstances:
   a. Through **force, threat or intimidation;**
   b. When the offended party is deprived of reason or is otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority;

x x x x x x x x x

Article 266-B. Penalties. - Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

When **by reason or on the occasion of the rape**, **homicide is committed,** the penalty shall be death.[28]

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[26] *Id.* at 45.

[27] *People v. De la Cruz,* 711 Phil. 566, 571 (2013).

[28] Emphasis ours.

Thus, in the special complex crime of rape with homicide, the following elements must concur: (1) the appellant had carnal knowledge of a woman; (2) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (3) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman.[29] Accordingly, the prosecution must necessarily prove each of the component offenses with the same precision that would be necessary if they were made the subject of separate complaints.[30]

In the instant case, the Court concurs with the rulings of both the trial and appellate courts in categorically finding the presence of the foregoing elements. In proving the guilt of appellant, the prosecution presented the testimonies of BBB, the 8-year-old stepson of appellant and grandson of AAA, as well as that of Dr. Calucin, the Municipal Health Officer of Milagros, Masbate who conducted the post-mortem examination on AAA's body. A plain and simple reading of BBB's testimony reveals his unquestionable certainty as to the identity of appellant as well as to the manner by which AAA was raped and killed. From a distance of a mere few feet away, BBB witnessed, with his own eyes, the event in its entirety from the moment appellant entered the house and undressed himself and AAA, to the time he choked and placed himself on top of her, up until the moment when he dragged her lifeless body out of the house to throw her into a nearby river. In fact, as aptly observed by the trial court, he unmistakably pointed at appellant, whose familiarity as his stepfather was unassailable. We quote the pertinent portion of BBB's testimony, thus:

Q. x x x In the evening of September 3, 2011, you saw (appellant) in your house with your lola?
A: Yes, sir.

Q: You saw your lola AAA naked?
A: Yes sir she was naked.

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[29] *People v. Jose Broniola alias "Asot,"* G.R. No. 211027, June 29, 2015.

[30] *People v. Montanir, et al.,* 662 Phil. 535, 549 (2011).

Q: Did she on her own undress or did somebody else undress her?
A: (Appellant) undressed her.

Q: When your grandmother was being undressed by (appellant), what was your lola AAA doing?
A: She was shouting for help.

x x x x x x x x x

Q: While your grandmother was shouting for help, what did (appellant) do, if any?
A: He was choking my grandmother.

Q: Was (appellant) able to undress your grandmother of her panty?
A: Yes sir.

x x x x x x x x x

Q: After (appellant) undressed your grandmother and she was already naked and you saw (appellant) also undressed (sic) his shirt and pants, leaving only his brief, what happened thereafter?
A: She was raped.

Q: Mr. witness, did you see (appellant) lying on top of your grandmother?
A: Yes sir,

Q: While (appellant) was on top of your grandmother did you see whether (he) inserted his penis into the vagina of your grandmother?
A: Yes sir.

COURT: You said she was raped. What do you mean by raped?
A: He lied (sic) on top.

Q: So you are telling us that (appellant) inserted his penis into the vagina of your grandmother or some other parts of your grandmother's body?
A: On the anus.

x x x x x x x x x

Q: How were you able to recognize that is was (appellant) who entered the room and it was (him) (sic) entered his penis into the rectum of your grandmother?
A: He was by the door and the moon was bright.[31]

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[31] *Rollo*, pp. 7-9.

From the aforequoted testimony, it is clear, therefore, that BBB was certain that rape was committed by appellant against AAA. The fact that BBB stated at one time that appellant inserted his penis inside AAA's anus does not necessarily belie BBB's testimony that as the trial court observed, an 8-year-old boy is not expected to distinguish an anus from a vagina. Moreover, the witness had stated several times that it was the vagina where the penis was inserted and that appellant was on top of AAA. The minor inconsistency in his testimony does not in any way affect AAA's credibility, especially that there are other pieces of evidence that strongly corroborate his testimony like the findings of the medico-legal as discussed below.

Apart from this, BBB's spontaneous yet categorical account of the series of events was further corroborated by the findings of Dr. Calucin whose Necropsy Report reveals an evident congruence between BBB's statements and AAA's injuries. As borne by the records, AAA sustained abrasions on her throat and neck thereby affirming BBB's allegation that appellant was choking his grandmother during the rape. It is rather clear, therefore, that the courts below made no error insofar as the evidentiary value of the testimonies of the prosecution's witnesses is concerned.

Time and again, the Court has ruled that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying, which opportunity is denied to the appellate courts.[32] Absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings, particularly when no significant facts and circumstances are shown to have been overlooked or disregarded which when considered would have affected the outcome of

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[32] *People v. Laog*, 674 Phil. 444, 457 (2011).

the case.[33] This rule is even more stringently applied if the appellate court concurred with the trial court.[34]

It bears stressing that to refute the clear and convincing testimonies presented by the prosecution, appellant merely interposed the defenses of denial and alibi. Testifying as the defense's lone witness, he simply claimed to be at his house with his wife, DDD, and his wife's father, EEE, at the time of the incident. According to him, he could not have killed and raped AAA for he was just conversing with DDD and EEE at home from 7:00 p.m. all the way until midnight. Yet, as pointed out by the lower courts, his house was a mere 500 meters away from AAA's house. The Court cannot, therefore, take credence of said defense for his sheer and utter failure to show that it was physically impossible for him to be at the scene of the crime at the time of its commission. To make matters worse, as the prosecution asserted, his defense of alibi was not even corroborated by anybody else, not even by his common-law wife, DDD, or her father, EEE, with whom he swore he was having a conversation with at the time of the incident. In fact, they were even the ones who filed the complaint against him.

No jurisprudence in criminal law is more settled than that alibi and denial, the most common defenses, are inherently weak and easily fabricated. As such, they are generally rejected[35] for the positive identification of the accused, without any showing of ill motive on the part of the eyewitness testifying, should prevail over the alibi and denial of the appellant.[36] On the one hand, an accused's bare denial cannot generally be held to prevail when raised against the complainant's direct, positive and categorical testimony.[37] On the other hand, unless the accused

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[33] *Id*.

[34] *Id*.

[35] *People v. Candellada,* 713 Phil. 623, 637 (2013).

[36] *People v. Laog*, *supra* note 32, at 461.

[37] *People v. Candellada, supra* note 35.

establishes his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime, his acquittal cannot be properly justified.[38] Indeed, when alibi is unsubstantiated by clear and convincing proof, such defense is negative, self-serving, and undeserving of any weight in law.[39]

As to appellant's argument that assuming without necessarily admitting that he is responsible for the death of AAA, he should only be liable for homicide, due to the fact that the sexual assault was not proven beyond reasonable doubt, the Court resolves to deny the same. As expressly stated by the trial court, the medical certificate issued was an off-shoot of the post-mortem examination conducted by Dr. Calucin in the early morning following the rape which shows the presence of spermatozoa in the vaginal canal of AAA.[40] Nevertheless, even granting the absence of the same would not exonerate appellant from the crime charged simply because the presence or absence of spermatozoa is not an element of rape.[41]

In the absence, therefore, of any showing that either the RTC or the CA erred in their findings of fact, especially as to the credibility of the prosecution witnesses, the Court finds no reason to disturb the same. As clearly proved by the prosecution, appellant herein succeeded in accomplishing his sexual perversion by having carnal knowledge of the mother of his own common-law wife by means of force, threats, and intimidation, in the very view of his own stepson, and thereafter strangling her to death. Since the records clearly evince the guilt of appellant in the commission of his horrific acts, the Court deems it necessary to penalize the same with *reclusion perpetua,* which should have been death, had it not been for

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[38] *People v. Payot, Jr.,* 581 Phil. 575, 586-587 (2008).

[39] *People v. Laog, supra* note 32, at 461-462, citing *People v. Nieto*, 571 Phil. 220, 236 (2008).

[40] CA *rollo*, p. 56.

[41] *People v. Manalili*, 716 Phil. 762, 774 (2013).

the passage of RA No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines" prohibiting the imposition thereof. Nevertheless, let it be noted that appellant shall not be eligible for parole by virtue of said Act.

There is, however, a need to modify the amounts of damages awarded. Hence, pursuant to prevailing jurisprudence,[42] both awards of moral and exemplary damages are increased to ₱100,000.00 each. Moreover, said amounts shall earn interest at the rate of 6% per annum from date of finality of this judgment until fully paid.[43]

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision dated October 17, 2014 of the Court of Appeals in CA-G.R. CR- HC No. 06252 finding appellant Charlie Balisong guilty beyond reasonable doubt of the crime of rape with homicide, a special complex crime under Article 266-B, paragraph 5 of the Revised Penal Code, as amended by Republic Act No. 8353, sentencing him to suffer the penalty of *reclusion perpetua*, without eligibility of parole, in accordance with the mandate under Republic Act No. 9346 prohibiting the imposition of death penalty, and to pay AAA's heirs the amount of ₱100,000.00 as civil indemnity, with **MODIFICATIONS** that the amount of damages be increased to ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages, and that an interest be imposed on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

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[42] *People v. Ireneo Jugueta*, G.R. No. 202124, April 5, 2016.

[43] *Id*.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated dated June 8, 2015.

THIRD DIVISION

[G.R. No. 181268. August 15, 2016]

MILAGROS HERNANDEZ, represented by her Attorney-In-Fact, FE HERNANDEZ-ARCEO, *petitioner, vs.* **EDWINA C. OCAMPO, PHILIPPINE SAVINGS BANK, FELICITAS R. MENDOZA, METROPOLITAN BANK AND TRUST COMPANY, the SHERIFF, Regional Trial Court, Biñan, Laguna, and the REGISTER OF DEEDS, CALAMBA CITY, LAGUNA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF MORTGAGE; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE UNDER REPUBLIC ACT 3135, AS AMENDED; IN CASES OF EXTRAJUDICIAL FORECLOSURE SALE OF REAL ESTATE MORTGAGE, THE PURCHASER OR THE MORTGAGEE WHO IS ALSO THE PURCHASER IN THE FORECLOSURE SALE MAY APPLY FOR A WRIT OF POSSESSION EITHER WITHIN THE ONE-YEAR REDEMPTION PERIOD, UPON THE FILING OF A BOND OR AFTER THE LAPSE OF THE REDEMPTION PERIOD, WITHOUT NEED OF A BOND; DISCUSSED. — A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property. It may be issued in: (1) land registration proceedings under Section 17 of Act No. 496; (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135, as amended by Act No. 4118; and (4) execution sales. In cases of extrajudicial foreclosure sales of real estate mortgage under Section 7 of Act No. 3135, as amended, the purchaser or the mortgagee who is also the purchaser in the foreclosure sale may apply for a writ of possession either: (1) within the one-year redemption

period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond. In *Nagtalon v. United Coconut Planters Bank*, we explained these two instances when a purchaser can apply for a writ of possession: During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession. On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property. The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. This second scenario is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.

2. ID.; ID.; ID.; ID.; THE DUTY OF THE TRIAL COURT TO GRANT A WRIT OF POSSESSION TO A PURCHASER IN A PUBLIC AUCTION IS A MINISTERIAL FUNCTION OF THE COURT, WHICH CANNOT BE ENJOINED OR RESTRAINED, EVEN BY THE FILING OF A CIVIL CASE FOR THE DECLARATION OF NULLITY OF THE FORECLOSURE AND CONSEQUENT AUCTION SALE.— We have consistently held that the duty of the trial court to grant a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale. Moreover, any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in

Section 8 of Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*. However, this rule admits of an exception.

3. ID.; ID.; ID.; ID.; AFTER THE LAPSE OF THE REDEMPTION PERIOD, THE PURCHASER, REDEMPTIONER OR THIRD-PARTY-PURCHASER IN AN EXTRAJUDICIAL FORECLOSURE SALE SHALL BE SUBSTITUTED TO AND ACQUIRE ALL THE RIGHTS, TITLE, INTEREST AND CLAIM OF THE JUDGMENT DEBTOR TO THE PROPERTY, AND ITS POSSESSION SHALL BE GIVEN TO THE PURCHASER OR LAST REDEMPTIONER, BUT THE POSSESSION OF THE PROPERTY WILL NOT BE GIVEN TO EITHER THE PURCHASER, REDEMPTIONER OR THIRD-PARTY-PURCHASER WHEN A THIRD PARTY IS ACTUALLY HOLDING THE PROPERTY ADVERSELY TO THE JUDGMENT DEBTOR.— The provision of Section 33 of Rule 39 of the Rules of Court relative to an execution sale applies to extrajudicial foreclosure of real estate mortgages by virtue of Section 6 of Act No. 3135, as amended. x x x. [U]pon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment debtor to the property, and its possession shall be given to the purchaser or last redemptioner. It is but logical that Section 33, Rule 39 of the Rules of Court be applied also to cases involving extrajudicially foreclosed properties that were bought by a purchaser and later sold to third-party-purchasers after the lapse of the redemption period. The possession of the property, however, will not be given to either the purchaser, redemptioner or third-party-purchaser when a third party is actually holding the property adversely to the judgment debtor. In which case, the issuance of the writ of possession ceases to be *ex-parte* and non-adversarial. Thus, where the property levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to conduct a hearing to determine the nature of said possession, *i.e.*, whether or not he is in possession of the subject property under a claim adverse to that of the judgment debtor.

4. ID.; ID.; ID.; THE THIRD PARTY'S POSSESSION OF THE PROPERTY IS LEGALLY PRESUMED TO BE

PURSUANT TO A JUST TITLE, WHICH MAY ONLY BE OVERCOME BY THE PURCHASER IN A JUDICIAL PROCEEDING FOR RECOVERY OF THE PROPERTY, AS IT IS ONLY THROUGH SUCH JUDICIAL PROCEEDING THAT THE NATURE OF THE ADVERSE POSSESSION BY THE THIRD PARTY IS DETERMINED, ACCORDING SUCH THIRD PARTY DUE PROCESS AND THE OPPORTUNITY TO BE HEARD.— In *Philippine National Bank v. Court of Appeals* and *Royal Savings Bank v. Asia,* we held that the obligation of a court to issue an *ex parte* writ of possession in favor of a purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor. This is because a third party, who is not privy to the debtor, is protected by law and can only be ejected from the premises after he has been given an opportunity to be heard, to comply with the time-honored principle of due process. We further explained that protecting third party rights finds its basis in the Civil Code, thus: Art. 43. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property. x x x. [U]nder the law, the third party's possession of the property is legally presumed to be pursuant to a just title, which may only be overcome by the purchaser in a judicial proceeding for recovery of the property. It is only through such a judicial proceeding that the nature of the adverse possession by the third party is determined, according such third party due process and the opportunity to be heard.

5. ID.; ID.; ID.; ID.; THERE SHOULD BE CERTAINTY OF POSSESSION BEFORE APPLYING THE EXCEPTION TO THE GENERAL RULE IN ISSUING WRITS OF POSSESSION.— In *Gopiao v. Metropolitan Bank & Trust Co.*, we ruled that there should be **certainty** of possession before applying the exception to the general rule in issuing writs of possession x x x. Hernandez claims actual possession of the lots involved since 1985 through her daughter. However, in their comments, both banks alleged that they are mortgagees in good faith. They both alleged that they conducted ocular inspection on the lots and found both lots unoccupied. They likewise made verifications with the Registry of Deeds of

Calamba, Laguna, Municipal Assessor, and Treasurer's office, and found out that the TCTs and tax declarations were still registered in the name of Ocampo and Mendoza, without any annotations as to the existence of any encumbrances or liens, including adverse claims. Following the case of *Gopiao,* the exception to the general rule does not apply in this case; hence, the issuance of the writs of possession continues to be ministerial.

6. ID.; ID.; ID.; ID.; A THIRD PERSON, WHO IS NOT THE JUDGMENT DEBTOR, OR HIS AGENT, CAN VINDICATE HIS CLAIM TO A PROPERTY LEVIED THROUGH THE REMEDIES OF *TERCERIA* AND AN INDEPENDENT "SEPARATE ACTION"; BOTH REMEDIES ARE CUMULATIVE AND MAY BE AVAILED OF INDEPENDENTLY OF OR SEPARATELY FROM THE OTHER.— [W]e note that Hernandez is not without any remedy. A third person, who is not the judgment debtor, or his agent, can vindicate his claim to a property levied through the remedies of (1) *terceria* to determine whether the sheriff has rightly or wrongly taken hold of the property not belonging to the judgment debtor or obligor and (2) an independent "separate action." By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent "separate action," the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other.

7. ID.; CIVIL PROCEDURE; PROVISIONAL REMEDIES; INJUNCTION; NOT PROPER WHERE THE COMPLAINANT'S RIGHT OR TITLE IS DOUBTFUL OR DISPUTED, AS THE POSSIBILITY OF IRREPARABLE DAMAGE WITHOUT PROOF OF ACTUAL EXISTING RIGHT IS NOT A GROUND FOR AN INJUNCTION. — Hernandez's entitlement to the injunctive writ hinges on her

prima facie right to the properties subject of Civil Case No. B-6191. However, her claims of possession and ownership are belied by the banks' own claims. From these alone, it is clear that Hernandez failed to discharge the burden of showing a clear and unmistakable right to be protected. Where the complainant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.

8. ID.; ID.; ID.; ID.; COURTS SHOULD AVOID ISSUING A WRIT OF PRELIMINARY INJUNCTION, WHICH IN EFFECT, WOULD DISPOSE OF THE MAIN CASE WITHOUT TRIAL. — The RTC is also correct in denying the motion to enjoin the implementation of the writs of possession because equally pertinent is the rule that courts should avoid issuing a writ of preliminary injunction, which in effect, would dispose of the main case without trial. The ground relied upon by the trial court in not issuing the writ of preliminary injunction in this case is its doubt over petitioner's allegations of bad faith on the part of Mendoza and Ocampo in the acquisition and titling of the properties, and on the part of the banks for allowing the mortgage of the properties. If the RTC were to grant the motion on these grounds, it would be virtually recognizing petitioner's claim that the deeds of conveyances and the titles are a nullity without further proof to the detriment of the doctrine of presumption of validity in favor of these documents. As we have stated in *Medina v. Greenfield Development Corporation*, there would, in effect, be a prejudgment of the main case and a reversal of the rule on the burden of proof since the courts would be assuming propositions, which claimants are inceptively duty bound to prove.

APPEARANCES OF COUNSEL

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Ysmael Salgado Masangya Gordove Avila & Associates for respondent PS Bank.

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 from the Decision[2] dated September 24, 2007 of the Court of Appeals (CA) in CA-G.R. SP. No. 90050, which affirmed the Order[3] dated November 30, 2004 of the Regional Trial Court (RTC) of Biñan, Laguna, Branch 24 in Civil Case No. B-6191 for Annulment of Deed of Sale and Transfer Certificates of Title (TCT), and its Resolution[4] dated January 14, 2008 denying petitioner's Motion for Reconsideration[5] dated November 20, 2007.

The Facts

Petitioner Milagros Hernandez (Hernandez) alleges that sometime in 1985, she bought from Romeo Uy An (An) two parcels of land, Lot 8 Block 3 (Lot 8) and Lot 6 Block 3 (Lot 6), both located in Biñan, Laguna,[6] as evidenced by a deed of sale.[7] From 1985, she was in continuous, open, and adverse possession of these lots. Until now, her daughter, Fe Hernandez-Arceo and her family occupy them.[8] Hernandez entrusted the registration of the lots in her name to her son-in-law, Ricardo San Andres. However, he died in 1991 without transferring

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[1] *Rollo*, pp. 15-28.

[2] Penned by Associate Justice Andres B. Reyes, Jr., and concurred in by Associate Justices Arcangelita Romilla-Lontok and Ramon M. Bato, Jr. of the Special Sixth Division. *Id.* at 114-124.

[3] CA *rollo*, pp. 28-29.

[4] *Rollo*, pp. 39-41.

[5] *Id*. at 32-37.

[6] *Id*. at 17, 115.

[7] CA *rollo,* pp. 34-35.

[8] *Rollo*, pp. 115-116.

the titles to Hernandez's name.[9] At that time, Hernandez was already residing in the United States[10] and was not aware of the non-registration of the lots. Due to old age, she has also not come back to the Philippines for a long time.[11]

Sometime in 2002, Hernandez and her family were surprised to receive a letter from one Atty. Agapito Carait, who wrote in behalf of respondent Felicitas R. Mendoza (Mendoza), demanding that they vacate Lot 8.[12] Upon investigation, they discovered that the titles to the lots were registered in the names of Mendoza and respondent Edwina Ocampo (Ocampo) by virtue of a Deed of Sale dated April 13, 1989 executed by An. Lot 8 was then covered by TCT No. T-193772 and registered in the name of Mendoza, while Lot 6 was covered by TCT No. T-193773 and registered in the name of Ocampo.[13]

Hernandez and her family also discovered that the lots were mortgaged. Lot 8 was mortgaged with Metropolitan Bank and Trust Company (Metrobank) and Lot 6 was mortgaged with Philippine Savings Bank (PSB).[14]

Eventually, the mortgages were extrajudicially foreclosed and the lots were separately sold at public auctions with the two banks emerging as the highest bidders. Corresponding Certificates of Sale for Lot 6 and Lot 8 were issued to PSB and Metrobank, respectively. PSB registered Lot 6 on November 9, 2001[15] and TCT No. T-518364 was issued in its name.[16]

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[9] *Id*. at 72, 115; CA *rollo*, p. 92.

[10] *Rollo,* pp. 185, 191-192.

[11] *Id*. at 284.

[12] *Id*.

[13] *Rollo,* pp. 284-285.

[14] *Id*. at 284.

[15] *Id*. at 245.

[16] *Id*. at 285.

Metrobank also registered Lot 8 on May 6, 2003[17] and TCT No. T-550116 was issued in its name.[18]

On January 18, 2002, PSB filed a petition for the issuance of writ of possession, docketed as LRC Case No. B-3071, before the RTC of Biñan, Laguna, Branch 24.[19] The RTC granted the writ in an Order dated December 22, 2002.[20]

Meanwhile, Hernandez filed a Complaint for Cancellation of Transfer Certificates of Title, which was raffled to the same RTC, Branch 24. The case, docketed as Civil Case No. B-6191, was filed against Mendoza, Ocampo, Metrobank, PSB, and the Register of Deeds of Calamba.[21] The summonses were served upon Metrobank and PSB on November 25, 2002.[22]

On March 24, 2004, the RTC in LRC Case No. B-3071 issued a Writ of Possession[23] in favor of PSB over the six lots subject of the petition, one of which was Lot 6.[24] A Notice to Vacate[25] was then issued on August 9, 2005. Both the Writ of Possession and the Notice to Vacate were addressed to Ocampo and her husband, Ricardo Ocampo, as mortgagors.

Hernandez then filed an Urgent Motion to Admit Supplemental Complaint With Motion For Temporary Restraining Order or Preliminary Prohibitory Injunction (Motion for Temporary Restraining Order or Preliminary Injunction)[26] in Civil Case No. B-6191 to stop PSB and the Sheriff from enforcing the writ.

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[17] *Id*. at 134.

[18] *Id*. at 285.

[19] *Id*. at 116, 245.

[20] *Id.* at 246.

[21] CA *rollo*, pp. 90-96.

[22] *Rollo*, pp. 57, 136.

[23] *Id.* at 42-45.

[24] *Id.* at 43.

[25] *Id*. at 46.

[26] CA *rollo*, pp. 129-147.

On May 20, 2004, Metrobank filed a petition for the issuance of writ of possession docketed as LRC Case No. B-3389 before the same RTC, Branch 24.[27] The petition was granted on May 16, 2005, and a Writ of Possession[28] dated July 20, 2005 over Lot 8 was issued. Consequently, a Notice to Vacate[29] dated August 9, 2005 was also issued. Both the Writ of Possession and the Notice to Vacate were addressed to Mendoza. Although Metrobank was not originally impleaded in Hernandez's Motion for Temporary Restraining Order, it was later included as party respondent in the Compliance[30] dated October 2, 2008.[31]

The RTC's Ruling

The RTC denied Hernandez's Motion for Temporary Restraining Order or Preliminary Injunction in an Order[32] dated November 30, 2004, the decretal portion of which reads:

> *WHEREFORE*, premises considered, the petition for issuance of Temporary Restraining Order and/or injunction, for lack of merit is DENIED.
>
> SO ORDERED.[33]

The RTC ruled that the allegation of fraudulent registration of the titles in the names of Ocampo and Mendoza were evidentiary in nature and thus, must be proven through trial on the merits. It pointed out that PSB relied on the title of the property mortgaged, which was clean and free from any annotation, encumbrance, lien or any adverse claim. The RTC

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[27] *Rollo*, p. 134.

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

[29] *Id.* at 49.

[30] *Id.* at 111-113.

[31] *Id.* at 142.

[32] CA *rollo*, pp. 28-29.

[33] *Id.* at 29.

also agreed that the issuance of writ of possession is ministerial to the court after the lapse of one year to redeem the property.[34]

Hernandez filed a Motion for Reconsideration, but it was also denied by the RTC.[35] She thereafter filed a Petition for *Certiorari* with Prayer for Preliminary Injunction[36] under Rule 65 of the Revised Rules of Court with the CA.[37]

The Court of Appeals' Ruling

The CA dismissed the Petition for *Certiorari* in the now assailed Decision dated September 24, 2007, the relevant dispositive portion of which reads:

> In sum, We find no grave abuse of discretion on the part of the court *a quo* in denying the issuance of a writ of preliminary injunction.
>
> **WHEREFORE**, the petition for certiorari is hereby **DISMISSED.**
>
> **SO ORDERED.**[38]

The CA ruled that Hernandez was not able to prove a clear and unmistakeable right, which is one of the requisites for the issuance of an injunction. Thus:

> x x x Since the issue of ownership is the crux in this case, as there were transfer certificates of title in the name of Ocampo and Mendoza while on the other hand the adverse possession as owners are alleged to be exercised by petitioner, there is no unmistakable right yet on the part of petitioner. As she still has to prove that she is the owner, it cannot be said that she has an existing right as the owner and is entitled to the writ of injunction. x x x[39]

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

[35] *Id.* at 70.

[36] *Id.* at 2-26.

[37] Docketed as CA-G.R. SP. No. 90050. *Rollo*, p. 285.

[38] *Id.* at 124.

[39] *Id.* at 119.

The CA found the TCTs in the names of Ocampo and Mendoza to be superior documents over Hernandez's Deed of Sale executed with An. Absent a finding that the TCTs were fraudulently obtained by Ocampo and Mendoza, the right of Hernandez cannot be considered yet as clear and unmistakable.[40]

The CA also held that while petitioner is correct that there are exceptions to the rule that a writ of possession is ministerial, it cannot nullify the RTC's denial of the writ. The CA pointed out that the principle of non-interference between concurrent and coordinate courts applies in this case since the petition for issuance of preliminary injunction was filed in the same court that issued the writs of possession in two distinct and separate cases. The CA held:

> x x x [T]he propriety of the writ of possession cannot be questioned by praying for a preliminary injunction in a case for annulment of the TCTs. And if the TCTs were issued in a judicial proceeding, it can neither be nullified by a co-equal body. The better remedy of petitioner is to directly question the writ of possession and to ask for its nullification with the proper court. x x x[41]

Hernandez filed a Motion for Reconsideration[42] dated November 20, 2007, which was denied by the CA in its Resolution[43] dated January 14, 2008. Hence, this petition.

The sole issue presented is whether Hernandez is entitled to the issuance of a writ of preliminary injunction. Hernandez argues that she is not questioning the propriety of the issuance of the writs of possession against Ocampo and Mendoza. She insists that the writs of possession cannot be enforced against her because she was not privy to the foreclosure proceedings; otherwise, her right to due process of law will be violated. Hernandez claims that the writs of possession addressed to

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

[41] *Id*. at 123.

[42] *Id.* at 32-37.

[43] *Id.* at 39-41.

specific persons cannot be enforced against her, who is in actual possession of the property, and who has filed a case of annulment of titles based on a right independent of and adverse to the right of those to whom the writs were directed. She cites the settled rule that the issuance of a writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the mortgagor.

Both the respondent banks argue that a preliminary injunction is not the proper remedy because the issuance and enforcement of the writs of possession are ministerial duties of the court. They also argue that the legal requisites that have to be complied with in issuing an injunctive writ were not met since Hernandez does not have any clear and positive right over the properties.

Our Ruling

The petition is unmeritorious.

The writs of possession can be issued and implemented.

A writ of possession is generally understood to be an order whereby the sheriff is commanded to place a person in possession of a real or personal property.[44] It may be issued in: (1) land registration proceedings under Section 17 of Act No. 496;[45] (2) judicial foreclosure, provided the debtor is in possession of the mortgaged realty and no third person, not a party to the foreclosure suit, had intervened; (3) extrajudicial foreclosure of a real estate mortgage under Section 7 of Act No. 3135,[46] as amended by Act No. 4118; and (4) execution sales.

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[44] *Chailease Finance Corporation v. Spouses Ma*, G.R. No. 151941, August 15, 2003, 409 SCRA 250, 252 citing *A.G. Development Corporation v. Court of Appeals*, G.R. No. 111662, October 23, 1997, 281 SCRA 155.

[45] The Land Registration Act (1902).

[46] An Act to Regulate the Sale of Property Under Special Powers Inserted In or Annexed To Real Estate Mortgages (1924).

In cases of extrajudicial foreclosure sales of real estate mortgage under Section 7[47] of Act No. 3135, as amended, the purchaser or the mortgagee who is also the purchaser in the foreclosure sale may apply for a writ of possession either: (1) within the one-year redemption period, upon the filing of a bond; or (2) after the lapse of the redemption period, without need of a bond.[48] In *Nagtalon v. United Coconut Planters Bank*,[49] we explained these two instances when a purchaser can apply for a writ of possession:

During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.

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[47] Sec. 7. In any sale made under the provisions of this Act, the purchaser may petition the [Regional Trial Court] of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an *ex parte* motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

[48] *Tolosa v. United Coconut Planters Bank*, G.R. No. 183058, April 3, 2013, 695 SCRA 138, 145.

[49] G.R. No. 172504, July 31, 2013, 702 SCRA 615.

On the other hand, upon the lapse of the redemption period, a writ of possession may be issued in favor of the purchaser in a foreclosure sale, also upon a proper *ex parte* motion. This time, no bond is necessary for its issuance; the mortgagor is now considered to have lost any interest over the foreclosed property. The purchaser then becomes the owner of the foreclosed property, and he can demand possession at any time following the consolidation of ownership of the property and the issuance of the corresponding TCT in his/her name. It is at this point that the right of possession of the purchaser can be considered to have ripened into the absolute right of a confirmed owner. The issuance of the writ, upon proper application, is a ministerial function that effectively forbids the exercise by the court of any discretion. This second scenario is governed by Section 6 of Act 3135, in relation to Section 35, Rule 39 of the Revised Rules of Court.[50] (Citations omitted.)

We have consistently held that the duty of the trial court to grant a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for the declaration of nullity of the foreclosure and consequent auction sale.[51]

Moreover, any question regarding the regularity and validity of the sale, as well as the consequent cancellation of the writ, is to be determined in a subsequent proceeding as outlined in Section 8 of Act No. 3135. Such question cannot be raised to oppose the issuance of the writ, since the proceeding is *ex parte*.[52]

However, this rule admits of an exception.

The provision of Section 33 of Rule 39 of the Rules of Court relative to an execution sale applies to extrajudicial foreclosure of real estate mortgages by virtue of Section 6 of Act No. 3135, as amended.[53] Section 33, Rule 39 of the Rules of Court provides:

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[50] *Id.* at 623-624.

[51] *Nagtalon v. United Coconut Planters Bank*, *supra.*

[52] *LZK Holdings and Development Corp. v. Planters Development Bank*, G.R. No. 167998, April 27, 2007, 522 SCRA 731, 739.

[53] *Okabe v. Saturnino*, G.R. No. 196040, August 26, 2014, 733 SCRA 652, 664-665; Section 6, Act No. 3135 provides:

Section 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; or, if so redeemed whenever sixty (60) days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner is entitled to the conveyance and possession; but in all cases the judgment obligor shall have the entire period of one (1) year from the date of registration of the sale to redeem the property. The deed shall be executed by the officer making the sale or his successor in office,and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. **The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.** (Emphasis supplied.)

From the foregoing, upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment debtor to the property, and its possession shall be given to the purchaser or last redemptioner. It is but logical that Section 33, Rule 39 of the Rules of Court be applied also to cases involving extrajudicially foreclosed properties that were bought by a purchaser and later sold to third-party-purchasers

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Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors-in-interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

after the lapse of the redemption period.[54] The possession of the property, however, will not be given to either the purchaser, redemptioner or third-party-purchaser when a third party is actually holding the property adversely to the judgment debtor. In which case, the issuance of the writ of possession ceases to be *ex-parte* and non-adversarial.

Thus, where the property levied upon on execution is occupied by a party other than a judgment debtor, the procedure is for the court to conduct a hearing to determine the nature of said possession, *i.e.*, whether or not he is in possession of the subject property under a claim adverse to that of the judgment debtor.[55]

In *Philippine National Bank v. Court of Appeals*[56] and *Royal Savings Bank v. Asia,*[57] we held that the obligation of a court to issue an *ex parte* writ of possession in favor of a purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor.[58] This is because a third party, who is not privy to the debtor, is protected by law and can only be ejected from the premises after he has been given an opportunity to be heard, to comply with the time-honored principle of due process.[59] We further explained that protecting third party rights finds its basis in the Civil Code, thus:

> Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

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[54] *Okabe v. Saturnino*, *supra* at 666.

[55] *Id.*

[56] G.R. No. 135219, January 17, 2002, 374 SCRA 22.

[57] G.R. No. 183658, April 10, 2013, 695 SCRA 511.

[58] *Id.* at 518, citing *Barican v. Intermediate Appellate Court,* G.R. No. 79906, June 20, 1988, 162 SCRA 358.

[59] *Id.* at 517, citing *Unchuan v. Court of Appeals*, G.R. No. 78775, May 31, 1988, 161 SCRA 710.

Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reinvindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

An *ex-parte* petition for issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated above. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court, by which one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."

It should be emphasized that an *ex-parte* petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.

As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere *ex-parte* possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.[60] (Citation omitted.)

As stated, under the law, the third party's possession of the property is legally presumed to be pursuant to a just title, which may only be overcome by the purchaser in a judicial proceeding for recovery of the property. It is only through such a judicial proceeding that the nature of the adverse possession by the

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[60] *Philippine National Bank v. Court of Appeals*, *supra* note 56 at 31-32.

third party is determined, according such third party due process and the opportunity to be heard.[61]

The question now is whether Hernandez is a third party in possession of the property claiming a right adverse to that of the debtor/mortgagor. We rule in the negative. Who holds actual possession of the property in this case is uncertain and disputed.

In *Gopiao v. Metropolitan Bank & Trust Co.*,[62] we ruled that there should be **certainty** of possession before applying the exception to the general rule in issuing writs of possession. Thus:

> x x x **The present case cannot be said to be identically analogous to any of the exceptions discussed above. While the facts of the foregoing rulings are similar to that of the instant case, there remains one crucial difference: the certainty of possession. In all three cases cited by the petitioner, the fact that the subject property was actually in the possession of the adverse third party is undisputed.** x x x
>
> In contrast, petitioner's possession of the subject properties in this case is questionable. As correctly observed by the courts below, petitioner failed to substantiate his possession with sufficient evidence. x x x
>
> Equally telling is that the titles covering the subject properties depict no trace of petitioner's claim. The findings of the trial court reveal that the unnotarized Deed of Sale is nowhere to be found on the dorsal side of the titles. There is likewise no notice or adverse claim annotated or inscribed at the back of the same. Upon verification at the Office of the Register of Deeds for the Province of Pampanga, Municipal Assessor and Treasurer's Office, respondent bank found out that the subject titles and latest tax declarations covering the disputed properties were still registered under the names of the Spouses Legaspi without any annotation on the same as to the existence of a sale between said spouses and petitioner.[63] (Emphasis supplied.)

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[61] *Development Bank of the Philippines v. Prime Neighborhood Association*, G.R. Nos. 175728 & 178914, May 8, 2009, 587 SCRA 582, 597.

[62] G.R. No. 188931, July 28, 2014, 731 SCRA 131.

[63] *Id.* at 141-142.

Hernandez claims actual possession of the lots involved since 1985 through her daughter. However, in their comments, both banks alleged that they are mortgagees in good faith. They both alleged that they conducted ocular inspection on the lots and found both lots unoccupied.[64] They likewise made verifications with the Registry of Deeds of Calamba, Laguna, Municipal Assessor, and Treasurer's office, and found out that the TCTs and tax declarations were still registered in the name of Ocampo and Mendoza, without any annotations as to the existence of any encumbrances or liens, including adverse claims.[65] Following the case of *Gopiao,* the exception to the general rule does not apply in this case; hence, the issuance of the writs of possession continues to be ministerial.

However, we note that Hernandez is not without any remedy. A third person, who is not the judgment debtor, or his agent, can vindicate his claim to a property levied through the remedies of (1) *terceria*[66] to determine whether the sheriff has rightly or

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[64] *Rollo*, pp. 70 & 151.

[65] *Id.* at 70-71 & 151.

[66] Section 16, Rule 39 of the Rules of Court provides:

Sec. 16. *Proceedings where property claimed by third person.*— If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and copy thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnity the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating

wrongly taken hold of the property not belonging to the judgment debtor or obligor and (2) an independent "separate action."

By the *terceria*, the officer shall not be bound to keep the property and could be answerable for damages. A third-party claimant may also resort to an independent "separate action," the object of which is the recovery of ownership or possession of the property seized by the sheriff, as well as damages arising from wrongful seizure and detention of the property despite the third-party claim. If a "separate action" is the recourse, the third-party claimant must institute in a forum of competent jurisdiction an action, distinct and separate from the action in which the judgment is being enforced, even before or without need of filing a claim in the court that issued the writ. Both remedies are cumulative and may be availed of independently of or separately from the other.[67]

In this case, Hernandez has already filed a separate action of annulment of title, which was a separate and distinct action from the *ex parte* petitions for issuance of writ of possession filed by PSB and Metrobank. It is in this action of annulment of title that Hernandez filed her urgent motion for issuance of a writ of temporary restraining order or preliminary injunction.

On that issue of injunction, PSB and Metrobank argue that the RTC, Branch 24 cannot enjoin itself from enforcing the writ of possession it earlier issued. The CA agreed with the respondent banks and ruled that if a writ of preliminary injunction

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his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favor of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

[67] *China Banking Corporation v. Ordinario*, G.R. No. 121943, March 24, 2003, 399 SCRA 430, 435-436.

is issued to stay the effects of the writ of possession, it would be an interference of a co-equal body. While this may not be technically correct, as there was only one court involved here,[68] we uphold the more relevant principle behind an injunctive writ.

Hernandez's entitlement to the injunctive writ hinges on her *prima facie* right to the properties subject of Civil Case No. B-6191. However, her claims of possession and ownership are belied by the banks' own claims. From these alone, it is clear that Hernandez failed to discharge the burden of showing a clear and unmistakable right to be protected. Where the complainant's right or title is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.[69]

The RTC is also correct in denying the motion to enjoin the implementation of the writs of possession because equally pertinent is the rule that courts should avoid issuing a writ of preliminary injunction, which in effect, would dispose of the main case without trial.[70]

The ground relied upon by the trial court in not issuing the writ of preliminary injunction in this case is its doubt over petitioner's allegations of bad faith on the part of Mendoza and Ocampo in the acquisition and titling of the properties, and on the part of the banks for allowing the mortgage of the properties. If the RTC were to grant the motion on these grounds, it would be virtually recognizing petitioner's claim that the deeds of conveyances and the titles are a nullity without further proof to the detriment of the doctrine of presumption of validity in favor of these documents. As we have stated in *Medina v. Greenfield Development Corporation*,[71] there would, in effect,

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[68] See *Royal Savings Bank v. Asia*, *supra* note 57.

[69] *Medina v. Greenfield Development Corporation*, G.R. No. 140228, November 19, 2004, 443 SCRA 150, 159.

[70] *Id.* at 161, citing *Searth Commodities Corp. v. Court of Appeals*, G.R. No. 64220, March 31, 1992, 207 SCRA 622, 629-630.

[71] *Id.*

be a prejudgment of the main case and a reversal of the rule on the burden of proof since the courts would be assuming propositions, which claimants are inceptively duty bound to prove.

WHEREFORE, the Petition is **DENIED**. The Decision dated September 24, 2007 of the Court of Appeals in CA-G.R. SP. No. 90050 is hereby AFFIRMED.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Peralta, Perez,* and *Reyes, JJ.* concur.

THIRD DIVISION

[G.R. No. 196289. August 15, 2016]

ELIZABETH ALBURO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW MAY BE RAISED THEREIN; EXCEPTIONS; PRESENT.— Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari* x x x. As an exception to the rule, questions of fact may be raised in a Rule 45 petition if any of the following is present: (1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are

conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. A question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts." On the other hand, a question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts." It is true that petitioner raises a question of fact in the present petition by insisting that she has no knowledge that she does not have sufficient funds when she issued the checks and that there was no proper service upon her of the notice of dishonor, however, this Court still deems it proper to consider the said issue because the MTCC and the RTC misapprehended the facts.

2. **CRIMINAL LAW; BOUNCING CHECKS LAW (BATAS PAMBANSA BILANG 22); ESSENTIAL ELEMENTS.—** For violation of Batas Pambansa Blg. 22, the prosecution must prove the following essential elements, namely: (1) The making, drawing, and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment. There is no dispute that the first and the third elements are present in this case.

3. **ID.; ID.; ID.; THE ACCUSED MUST HAVE KNOWLEDGE OF INSUFFICIENCY OF FUNDS OR CREDIT AT THE TIME OF THE ISSUANCE OF THE CHECK; RATIONALE; THE STATE SHOULD GIVE A WRITTEN NOTICE OF DISHONOR TO THE DRAWER, MAKER OR ISSUER OF THE DISHONORED CHECK, AS THE LACK OF A WRITTEN NOTICE IS FATAL FOR THE PROSECUTION. —** The remaining issue is whether or not the second element is present. To establish the existence of the

second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals,* to wit: To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment. This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge. x x x. A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.

4. ID.; ID.; ID.; ID.; IN CASES OF VIOLATION OF BP Blg. 22, THERE SHOULD BE CLEAR PROOF OF NOTICE, AND THE BURDEN OF PROVING NOTICE RESTS UPON THE PARTY ASSERTING ITS EXISTENCE.— The MTCC, as affirmed by the RTC, found the existence of the second element. x x x A close reading of the x x x findings, however, would show that the RTC failed to mention that petitioner received any notice of dishonor and simply stated that a representative of Landbank, Dau, Mabalacat, Pampanga Branch testified that notices of dishonor were issued. It is necessary in cases for violation of *Batas Pambansa Blg.* 22, that the prosecution prove that the issuer had received a notice of dishonor. It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service. The burden of proving notice rests upon the party asserting its existence. [O]rdinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof required is proof beyond reasonable doubt. Hence, for B.P. 22 cases, there should be clear proof of notice. Moreover, it is a general rule that, when

service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existed, otherwise the evidence is insufficient to establish the fact of service.

5. ID.; ID.; ID.; ID.; THE ABSENCE OF PROOF THAT ACCUSED RECEIVED ANY NOTICE INFORMING HER OF THE FACT THAT HER CHECKS WERE DISHONORED AND GIVING HER FIVE BANKING DAYS WITHIN WHICH TO MAKE ARRANGEMENTS FOR PAYMENT OF THE SAID CHECKS PREVENTS THE APPLICATION OF THE DISPUTABLE PRESUMPTION THAT SHE HAD KNOWLEDGE OF THE INSUFFICIENCY OF HER FUNDS AT THE TIME SHE ISSUED THE CHECKS. — A perusal of the records of the case, likewise shows the absence of any indication that petitioner received the notices of dishonor allegedly sent by Landbank. The absence of proof that petitioner received any notice informing her of the fact that her checks were dishonored and giving her five banking days within which to make arrangements for payment of the said checks prevents the application of the disputable presumption that she had knowledge of the insufficiency of her funds at the time she issued the checks. Absent such presumption, the burden shifts to the prosecution to prove that petitioner had knowledge of the insufficiency of her funds when she issued the said checks, otherwise, she cannot be held liable under the law.

6. ID.; ID.; ID.; ID.; THE ABSENCE OF A NOTICE OF DISHONOR IS A DEPRIVATION OF ACCUSED-PETITIONER'S STATUTORY RIGHT.— The giving of the written notice of dishonor does not only supply proof for the second element arising from the presumption of knowledge the law puts up, but also affords the offender due process. The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid. Thus, the absence of a notice of dishonor is a deprivation of petitioner's statutory right.

7. ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO PROVE THAT ACCUSED-PETITIONER WAS GIVEN

THE REQUISITE NOTICE OF DISHONOR IS A CLEAR GROUND FOR HER ACQUITTAL.— Anent the demand letter sent through registered mail, the same was not proven beyond reasonable doubt that petitioner received the same. Although the Registry Return Card shows that the letter was received and signed for by a Jennifer Mendoza who identified herself as a househelper of petitioner, it was not proven that the same person is a duly authorized agent of the addressee or the petitioner. For notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee. To establish beyond reasonable doubt that the issuer of the check indeed received the demand letter is highly important because it creates the presumption that the same issuer knew of the insufficiency of the funds. It is [also] essential for the maker or drawer to be notified of the dishonor of her check, so she could pay the value thereof or make arrangements for its payment within the period prescribed by law. To assume that because the Registry Receipt Card appears to have the signature of a person other than the addressee and that same person had given the letter to the addressee, is utterly erroneous and is not proof beyond reasonable doubt as required in criminal cases. Thus, there being no clear showing that petitioner actually knew of the dishonor of her checks, this Court cannot with moral certainty convict her of violation of B.P. 22. The failure of the prosecution to prove that petitioner was given the requisite notice of dishonor is a clear ground for her acquittal.

8. REMEDIAL LAW; RULES OF PROCEDURE; CASES SHOULD BE DETERMINED ON THE MERITS AFTER FULL OPPORTUNITY TO ALL PARTIES FOR VENTILATION OF THEIR CAUSES AND DEFENSES, RATHER THAN ON TECHNICALITY OR SOME PROCEDURAL IMPERFECTIONS.— Cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better. Necessarily, the need to remand the case to the CA, as prayed for by the petitioner, no longer arises.

9. CRIMINAL LAW; BOUNCING CHECKS LAW (BP Blg. 22); THE FINDING OF NO CRIMINAL LIABILITY FOR VIOLATION THEREOF DUE TO LACK OF SUFFICIENT

PROOF DOES NOT PREJUDICE THE CIVIL ASPECTS OF THE TRANSACTION BETWEEN THE PARTIES.— This decision, however, does not prejudice the civil obligations, if any, that petitioner might have incurred by reason of her transaction with private complainant. And while no criminal liability could be imposed in this case for lack of sufficient proof of the offense charged, a fair distinction should be made as to the civil aspects of the transaction between the parties.

APPEARANCES OF COUNSEL

Punzalan & Associates Law Office for petitioner.
Office of the Solicitor General for public respondents.
Del Rosario Law Office for private complainant.
Dela Cruz and Cabahig Law Offices co-counsel for petitioner.

D E C I S I O N

PERALTA, ***J.*:**

For resolution of this Court is the Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, dated May 16, 2011, of petitioner Elizabeth Alburo assailing the Resolutions[1] dated October 26, 2010 and March 24, 2011 of the Court of Appeals (*CA*) dismissing, based on technicality, her appeal of the cases filed against her for violation of *Batas Pambansa Bilang* 22 (*B.P. 22*) that she was eventually convicted by the Municipal Trial Court in Cities (*MTCC*), Branch 2, Angeles City and affirmed by the Regional Trial Court (*RTC*), Branch 58, Angeles City.

The following are the antecedent facts:

Petitioner and her husband bought a house and lot from petitioner's sister-in-law, Elsa Alburo-Walter, who is married to James Walter, through Aurelio Tapang in his capacity as

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, concurring.

attorney-in-fact of Elsa and James Walter. The subject property is located at Villasol Subdivision, Brgy. Santol, Angeles City, covered by TCT No. 71458. The agreed consideration is Fifty Thousand U.S. Dollars ($50,000.00) or its peso equivalent. Petitioner and her husband made a partial payment of Twenty-One Thousand U.S. Dollars ($21,000.00) and the remaining balance has been paid through four (4) postdated checks issued by petitioner, now the subjects of this case. The checks eventually bounced, thus, four (4) separate Informations for violation of B.P. 22 were filed with the MTCC, Branch 2, Angeles City against petitioner, that read as follows:

CRIMINAL CASE NO. 01-777

That sometime in the first week of July 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously draw and issue to the complainant, AURELIO TAPANG of Tapang Realty Company, a Land Bank, Dau Branch Check, bearing Check No. 0048902 post-dated/dated August 5, 2000 in the amount of ₱300,000.00, well-knowing that she has no sufficient funds in the bank, which check when presented for payment was dishonored for reason of "DRAWN AGAINST INSUFFICIENT FUNDS," and demands notwithstanding for more than five (5) days from notice of dishonor, the accused failed and refused, and still fails and refuses to redeem the said check, to the damage and prejudice of said complainant, AURELIO TAPANG, in the afore-mentioned amount of THREE HUNDRED THOUSAND PESOS (₱300,000.00), Philippine Currency.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-778

That sometime in the first week of July 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously draw and issue to the complainant, AURELIO TAPANG of Tapang Realty Company, a Land Bank, Dau Branch Check, bearing Check No. 0048902 post-dated/dated September 5, 2000 in the amount of ₱300,000.00, well-knowing that she has no sufficient funds in the bank, which check when presented for payment was dishonored for reason of "DRAWN AGAINST INSUFFICIENT FUNDS," and demands notwithstanding for more than five (5) days from notice of

dishonor, the accused failed and refused, and still fails and refuses to redeem the said check, to the damage and prejudice of said complainant, AURELIO TAPANG, in the afore-mentioned amount of THREE HUNDRED THOUSAND PESOS (₱300,000.00), Philippine Currency.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-779

That sometime in the first week of July 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously draw and issue to the complainant, AURELIO TAPANG of Tapang Realty Company, a Land Bank, Dau Branch Check, bearing Check No. 0048903 post-dated/dated August 5, 2000 in the amount of ₱300,000.00, well-knowing that she has no sufficient funds in the bank, which check when presented for payment was dishonored for reason of "DRAWN AGAINST INSUFFICIENT FUNDS," and demands notwithstanding for more than five (5) days from notice of dishonor, the accused failed and refused, and still fails and refuses to redeem the said check, to the damage and prejudice of said complainant, AURELIO TAPANG, in the afore-mentioned amount of THREE HUNDRED THOUSAND PESOS (₱300,000.00), Philippine Currency.

ALL CONTRARY TO LAW.

CRIMINAL CASE NO. 01-780

That sometime in the first week of July 2000, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully, and feloniously draw and issue to the complainant, AURELIO TAPANG of Tapang Realty Company, a Land Bank, Dau Branch Check, bearing Check No. 0048906 post-dated/dated November 5, 2000 in the amount of ₱363,460.00, well-knowing that she has no sufficient funds in the bank, which check when presented for payment was dishonored for reason of "DRAWN AGAINST INSUFFICIENT FUNDS," and demands notwithstanding for more than five (5) days from notice of dishonor, the accused failed and refused, and still fails and refuses to redeem the said check, to the damage and prejudice of said complainant, AURELIO TAPANG, in the afore-mentioned amount of THREE HUNDRED-SIXTY THREE THOUSAND FOUR HUNDRED SIXTY PESOS (₱363,460.00), Philippine Currency.

ALL CONTRARY TO LAW.

After trial on the merits, the MTCC,[2] on January 7, 2008, found the petitioner guilty beyond reasonable doubt of the offense charged and sentenced her to the following:

WHEREFORE, in view of the foregoing facts and circumstances, accused Elizabeth Alburo is hereby adjudged GUILTY beyond reasonable doubt [of] violation of Batas Pambansa Bilang 22 and she is, hereby, sentenced to suffer penalty as follows:

a. Criminal Case No. 01-777 – one year imprisonment and to pay the amount of Three hundred thousand pesos (₱300,000.00) Philippine currency face value of the check, as civil indemnity plus legal interest of six percent (6%) per annum from the filing of the information on May 25, 2001 until the finality of herein decision. Then after the judgment becomes final and executory until the obligation is satisfied the amount due shall earn an interest of 12% per year;

b. Criminal Case No. 01-778 – one year imprisonment and to pay the amount of Three hundred thousand pesos (₱300,000.00) Philippine currency face value of the check, as civil indemnity plus legal interest of six percent (6%) per annum from the filing of the information on May 25, 2001 until the finality of herein decision. Then after the judgment becomes final and executory until the obligation is satisfied the amount due shall earn an interest of 12% per year,

c. Criminal Case No. 01-779 – one year imprisonment and to pay the amount of Three hundred thousand pesos (₱300,000.00) Philippine currency face value of the check, as civil indemnity plus legal interest of six percent (6%) per annum from the filing of the information on May 25, 2001 until the finality of herein decision. Then after the judgment becomes final and executory until the obligation is satisfied the amount due shall earn an interest of 12% per year, and

d. Criminal Case No. 01-780 – one year imprisonment and to pay the amount of Three hundred sixty-three thousand four hundred sixty pesos (₱363,460.00) Philippine currency face value of the check, as civil indemnity plus legal interest of six percent (6%) per annum from the filing of the information on May 25, 2001 until the finality of herein decision. Then after the judgment becomes final and executory

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[2] Penned by Presiding Judge Katrina Nora S. Buan-Factora; *rollo,* pp. 56-62.

until the obligation is satisfied the amount due shall earn an interest of 12% per year;

Finally, accused Elizabeth is ordered to pay Sixty thousand pesos (₱60,000.00) as reasonable attorney's fees and cost of the suit amounting to ₱19,056.00.

SO ORDERED.[3]

On appeal, the RTC affirmed the MTCC, the dispositive portion of its Resolution[4] reading as follows:

WHEREFORE, finding no justifiable reason to warrant the reversal of the assailed Decision dated January 7, 2008 of the Municipal Trial Court in Cities, Branch II, Angeles City, the same is hereby AFFIRMED IN TOTO. Consequently, the appeal is hereby dismissed.

Costs against accused/appellant.

Upon finality of this Resolution, let the entire original records of these cases be remanded to its court of origin for its disposition.

SO ORDERED.[5]

Petitioner filed a petition for review with the CA that was dismissed by the latter in its Resolution dated October 26, 2010. The said Resolution reads, in part, as follows:

This Court resolves to dismiss the petition in view of the following infirmities:

1. There is no allegation of material dates as to when the questioned Order dated March 5, 2009 was received and the motion for reconsideration was filed;

2. The Office of the Solicitor General was not furnished [a] copy of the petition;

3. There are no copies of pleadings attached; and

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[3] *Id.* at 62. (Emphases omitted)

[4] Penned by Presiding Judge Philbert I. Iturralbe; *id.* at 51-55.

[5] *Rollo,* p. 55. (Emphasis omitted)

4. The case is erroneously captioned "People of the Philippines, Respondent *vs*. Elizabeth Alburo, Accused-Petitioner."

SO ORDERED.[6]

Petitioner's motion for reconsideration was denied in the CA's Resolution[7] dated March 24, 2011; hence, the present petition.

On June 13, 2011, this Court's Second Division resolved[8] to deny the petition for failure of the petitioner to sufficiently show any reversible error in the assailed Resolutions to warrant the exercise of this Court's discretionary appellate jurisdiction in this case, and to strictly comply with the requirements specified under Rule 45 and other related provisions of the 1997 Rules of Civil Procedure, as the petition lacks a valid affidavit of service in accordance with Sections 3 and 5, Rule 45 and Section 5 (d), Rule 56, in relation to Section 13, Rule 13 of the 1997 Rules of Civil Procedure, as amended, there being no properly accomplished *jurat* showing that the affiant exhibited before the notary public at least one current identification document issued by an official agency bearing the photograph and signature of the affiant as required under Sections 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended by Court En Banc Resolution dated February 19, 2008 in A.M. No. 02-8-13-SC.

This case was then transferred to the Third Division on July 4, 2011.[9]

Petitioner filed her Motion for Reconsideration[10] dated August 17, 2011 arguing that she would be denied due process to appeal her conviction by the lower court based merely on technicality.

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[6] *Id.* at 33.

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

[8] *Id.* at 257-258.

[9] *Id.* at 259.

[10] *Id.* at 260-270.

On September 14, 2011, this Court required the Office of the Solicitor General (*OSG*) to file its Comment on the Motion for Reconsideration. Eventually, the OSG filed its Comment[11] dated December 2, 2011. Petitioner, likewise filed her Reply to Comment[12] dated January 9, 2012.

This Court, in its Resolution[13] dated February 1, 2012, granted petitioner's Motion for Reconsideration dated August 17, 2011 and reinstated the petition. It also ordered the OSG to file its comment on the petition. In time, the OSG filed its Comment[14] dated May 21, 2012. Thereafter, petitioner filed her Reply[15] dated October 22, 2012.

The issues submitted for this Court's consideration are the following:

I.

THE HONORABLE COURT OF APPEALS ERRED IN OUTRIGHTLY DENYING THE PETITIONER'S AMENDED PETITION FOR REVIEW FOR STILL NOT BEARING COPIES OF THE PLEADINGS FILED BELOW DESPITE ATTACHMENT OF THE REQUIRED DOCUMENTS UNDER THE LAW, THEREBY SACRIFICING SUBSTANTIAL JUSTICE.

II.

THE HONORABLE COURT OF APPEALS LIKEWISE GRAVELY ERRED IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION WITH MOTION FOR LEAVE TO ADMIT ATTACHED AMENDED PETITION FOR REVIEW SINCE ITS DENIAL WOULD RESULT TO DENIAL OF RIGHT TO SUBSTANTIAL JUSTICE.

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[11] *Id.* at 287-299.

[12] *Id.* at 302-304.

[13] *Id.* at 305-306. On February 17, 2016, this Court in a Resolution denied the same motion, however, this Court recalled the latter resolution, and herein proceeded with the resolution of the petition for review.

[14] *Rollo,* pp. 330-344.

[15] *Id.* at 352-364.

III.

THE HONORABLE COURT OF APPEALS ERRED IN NOT CONSIDERING THE MERITORIOUS GROUND RAISED BY THE PETITIONER IN HER AMENDED PETITION FOR REVIEW.

In substance, petitioner argues that the prosecution failed to prove: (1) the second element of the crime charged; (2) she had knowledge when she issued the subject checks; and (3) she does not have sufficient funds for payment thereof. She adds that the only evidence presented is a demand letter which was allegedly sent to petitioner through registered mail and received by petitioner's housemaid.

Petitioner further insists that the demand letter is defective since Aurelio Tapang has no authority to collect the balance of the subject property. She also claims that nowhere in the alleged registry return receipt of the demand letter does it indicate that the signature appearing thereon is that of petitioner.

Petitioner also asserts that she never received any notice of dishonor and that the lower courts merely relied on the testimony made by Jerry S. Bognot, the representative of Landbank, who testified that for each of the unfunded checks, she was given notices of dishonor.

The OSG, on the other hand, points out that only questions of law can be raised in a petition for review on *certiorari* under Rule 45 and that the issues on whether petitioner has knowledge that she does not have sufficient funds when she issued the subject checks and whether there was proper service upon petitioner of the notice of dishonor are questions of fact.

The petition has merit.

Under Rule 45, Section 1 of the Rules of Court, only questions of law may be raised in a petition for review on *certiorari*:

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by certiorari from a judgment, final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review

on certiorari. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

As an exception to the rule, questions of fact may be raised in a Rule 45 petition if any of the following is present:

(1) when there is grave abuse of discretion; (2) when the findings are grounded on speculations; (3) when the inference made is manifestly mistaken; (4) when the judgment of the Court of Appeals is based on a misapprehension of facts; (5) when the factual findings are conflicting; (6) when the Court of Appeals went beyond the issues of the case and its findings are contrary to the admissions of the parties; (7) when the Court of Appeals overlooked undisputed facts which, if properly considered, would justify a different conclusion; (8) when the findings of the Court of Appeals are contrary to those of the trial court; (9) when the facts set forth by the petitioner are not disputed by the respondent; and (10) when the findings of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record.[16]

A question of fact exists "when the doubt or difference arises as to the truth or the falsehood of alleged facts."[17] On the other hand, a question of law exists "when the doubt or difference arises as to what the law is on a certain state of facts."[18]

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[16] *Pagsibigan v. People, et al.,* 606 Phil. 233, 241-242 (2009) [Per *J.* Carpio, First Division]. *See Medina v. Asistio, Jr.*, G.R. No. 75450, November 8, 1990, 191 SCRA 218, 223 [Per J. Bidin, Third Division] where this court enumerated for the first time the instances when the findings of fact by the trial courts and the Court of Appeals were passed upon and reviewed in a Rule 45 Petition.

[17] *Benito v. People,* G.R. No. 204644, February 11, 2015, 750 SCRA 450, 460, citing *Sesbreno v. Honorable Court of Appeals,* 310 Phil. 671, 679 (1995) [Per *J.* Quiason, First Division], *Bernardo v. Court of Appeals*, G.R. No. 101680, December 7, 1992, 216 SCRA 224, 232 (1992) [Per J. Campos, Jr., Second Division].

[18] *Id.*

It is true that petitioner raises a question of fact in the present petition by insisting that she has no knowledge that she does not have sufficient funds when she issued the checks and that there was no proper service upon her of the notice of dishonor, however, this Court still deems it proper to consider the said issue because the MTCC and the RTC misapprehended the facts.

For violation of Batas Pambansa Blg. 22, the prosecution must prove the following essential elements, namely:

(1) The making, drawing, and issuance of any check to apply for account or for value;
(2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and
(3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment.[19]

There is no dispute that the first and the third elements are present in this case. It was proven that petitioner issued the subject Landbank checks in favor of Aurelio Tapang as payment for the balance of the purchase of the house and lot owned by Elsa Alburo-Walter and when presented for payment, the same checks were dishonored for the reason of being drawn against insufficient funds.

The remaining issue is whether or not the second element is present. To establish the existence of the second element, the State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check. The rationale for this requirement is rendered in *Dico v. Court of Appeals*,[20] to wit:

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[19] *Ting v. Court of Appeals,* 398 Phil. 481, 458 (2000).

[20] 492 Phil. 534 (2005).

To hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, it must further be shown that accused knew at the time of the issuance of the check that he did not have sufficient funds or credit with the drawee bank for the payment of such check in full upon its presentment.

This knowledge of insufficiency of funds or credit at the time of the issuance of the check is the second element of the offense. Inasmuch as this element involves a state of mind of the person making, drawing or issuing the check which is difficult to prove, Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge. Said section reads:

> SEC. 2. *Evidence of knowledge of insufficient funds.* — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

For this presumption to arise, the prosecution must prove the following: (a) the check is presented within ninety (90) days from the date of the check; (b) the drawer or maker of the check receives notice that such check has not been paid by the drawee; and (c) the drawer or maker of the check fails to pay the holder of the check the amount due thereon, or make arrangements for payment in full within five (5) banking days after receiving notice that such check has not been paid by the drawee. In other words, the presumption is brought into existence only after it is proved that the issuer had received a notice of dishonor and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of

dishonor may be sent by the offended party or the drawee bank. The notice must be in writing. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.[21]

The MTCC, as affirmed by the RTC, found the existence of the second element. The RTC ruled:

> Accused also claims that the prosecution failed to prove that she received the demand letter (Exhibit B) sent to her, while the prosecution offered in evidence the Registry Receipt No. 3363 dated February 19, 2001 (Exhibit B-2) for the said letter and the Registry Return Card (Exhibit B-3) showing that the letter was received and signed for by a Jennifer Mendoza, who identified herself as a housemaid of the accused. Moreover, the representative of the Landbank, Dau, Mabalacat, Pampanga Branch testified that for each of the unfunded checks issued in these cases, they were given notices of dishonor (Exhibits P, P-1, P-2 and P-3).[22]

A close reading of the above findings, however, would show that the RTC failed to mention that petitioner received any notice of dishonor and simply stated that a representative of Landbank, Dau, Mabalacat, Pampanga Branch testified that notices of dishonor were issued. It is necessary in cases for violation of *Batas Pambansa Blg.* 22, that the prosecution prove that the issuer had received a notice of dishonor.[23] It is a general rule that when service of notice is an issue, the person alleging that the notice was served must prove the fact of service.[24] The burden of proving notice rests upon the party asserting its existence.[25]

Now, ordinarily, preponderance of evidence is sufficient to prove notice. In criminal cases, however, the quantum of proof

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[21] *Dico v. Court of Appeals, supra,* at 547-548. (Citations omitted)

[22] *Rollo,* p. 54.

[23] *Resterio v. People*, 695 Phil. 693, 707 (2012), citing *Ting v. Court of Appeals, supra* note 19, at 492-493.

[24] *Id.* (Citation omitted)

[25] *Id.*

required is proof beyond reasonable doubt. Hence, for B.P. 22 cases, there should be clear proof of notice. Moreover, it is a general rule that, when service of a notice is sought to be made by mail, it should appear that the conditions on which the validity of such service depends had existed, otherwise the evidence is insufficient to establish the fact of service.[26]

A perusal of the records of the case, likewise shows the absence of any indication that petitioner received the notices of dishonor allegedly sent by Landbank. The absence of proof that petitioner received any notice informing her of the fact that her checks were dishonored and giving her five banking days within which to make arrangements for payment of the said checks prevents the application of the disputable presumption that she had knowledge of the insufficiency of her funds at the time she issued the checks.[27] Absent such presumption, the burden shifts to the prosecution to prove that petitioner had knowledge of the insufficiency of her funds when she issued the said checks, otherwise, she cannot be held liable under the law.[28]

The giving of the written notice of dishonor does not only supply proof for the second element arising from the presumption of knowledge the law puts up, but also affords the offender due process.[29] The law thereby allows the offender to avoid prosecution if she pays the holder of the check the amount due thereon, or makes arrangements for the payment in full of the check by the drawee within five banking days from receipt of the written notice that the check had not been paid.[30] Thus, the absence of a notice of dishonor is a deprivation of petitioner's statutory right.

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[26] *Id*.

[27] *Caras v. Court of Appeals*, 418 Phil. 655, 667 (2001).

[28] *Idos vs. Court of Appeals,* 357 Phil. 198, 214 (1998).

[29] *Resterio v. People*, *supra* note 23, at 705.

[30] *Idos v. Court of Appeals*, note 28, at 207.

Anent the demand letter sent through registered mail, the same was not proven beyond reasonable doubt that petitioner received the same. Although the Registry Return Card shows that the letter was received and signed for by a Jennifer Mendoza who identified herself as a househelper of petitioner, it was not proven that the same person is a duly authorized agent of the addressee or the petitioner. For notice by mail, it must appear that the same was served on the addressee or a duly authorized agent of the addressee.[31] To establish beyond reasonable doubt that the issuer of the check indeed received the demand letter is highly important because it creates the presumption that the same issuer knew of the insufficiency of the funds. It is [also] essential for the maker or drawer to be notified of the dishonor of her check, so she could pay the value thereof or make arrangements for its payment within the period prescribed by law.[32] To assume that because the Registry Receipt Card appears to have the signature of a person other than the addressee and that same person had given the letter to the addressee, is utterly erroneous and is not proof beyond reasonable doubt as required in criminal cases.

Thus, there being no clear showing that petitioner actually knew of the dishonor of her checks, this Court cannot with moral certainty convict her of violation of B.P. 22. The failure of the prosecution to prove that petitioner was given the requisite notice of dishonor is a clear ground for her acquittal.[33]

Having ruled on the substantial issues raised, there is no longer a need to discuss the other issues that delve on the technicalities of the case because they can be passed upon in the interest of justice. Cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections.[34] In that way, the ends of justice would be served

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[31] *Resterio v. People*, *supra* note 23, at 708.

[32] *Caras v. Court of Appeals*, *supra* note 27, at 666.

[33] See *King v. People*, 377 Phil. 692, 710 (1999).

[34] *Garcia v. Philippine Airlines, Inc.,* 498 Phil. 808, 821 (2005).

better.[35] Necessarily, the need to remand the case to the CA, as prayed for by the petitioner, no longer arises.

This decision, however, does not prejudice the civil obligations, if any, that petitioner might have incurred by reason of her transaction with private complainant. And while no criminal liability could be imposed in this case for lack of sufficient proof of the offense charged, a fair distinction should be made as to the civil aspects of the transaction between the parties.[36]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, dated May 16, 2011, of petitioner Elizabeth Alburo is **GRANTED;** hence, the Resolutions dated October 26, 2010 and March 24, 2011 of the Court of Appeals are **SET ASIDE**. Consequently, the Decision dated January 7, 2008 of the Municipal Trial Court in Cities, Branch 2, Angeles City and the Resolution dated March 5, 2009 of the Regional Trial Court, Branch 58, Angeles City, convicting the petitioner of four (4) counts of violation of *Batas Pambansa Bilang 22,* are **REVERSED** and **SET ASIDE**. Petitioner Elizabeth Alburo is, therefore, **ACQUITTED**.

SO ORDERED.

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

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[35] *Id.*

[36] *Caras v. Court of Appeals*, *supra* note 27, at 668.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 15, 2016.

SECOND DIVISION

[G.R. No. 203192. August 15, 2016]

IBM PHILIPPINES, INC., *petitioner, vs.* **PRIME SYSTEMS PLUS, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTEREST; FOR INTEREST TO BECOME DUE AND DEMANDABLE, THERE MUST BE AN EXPRESS STIPULATION FOR THE PAYMENT OF INTEREST, AND THE AGREEMENT TO PAY INTEREST IS REDUCED IN WRITING.—** It has been a long-standing rule that for interest to become due and demandable, two requisites must be present: (1) that there must be an express stipulation for the payment of interest and (2) the agreement to pay interest is reduced in writing. Here, petitioner insists that there was an express agreement for a 3% monthly interest, which petitioner placed in writing in its letter dated December 29, 1997. x x x. [T]his Court finds that the evidence points to respondent's lack of consent to a 3% monthly interest. Petitioner adamantly claims that respondent's act of requesting for a lower interest rate shows the latter's agreement to a 3% monthly interest. Such an askewed reasoning escapes us — especially here where respondent's ***authorized*** representative never assented to petitioner's letter. To accept petitioner's misplaced argument that the parties mutually agreed to a 3% monthly interest when respondent subsequently ordered ATMs despite receiving petitioner's letter imposing a 3% monthly interest will render the second condition - that the agreement be reduced in writing — futile.

2. **ID.; ID.; ID.; LEGAL RATE OF 6% ANNUAL INTEREST SHALL BE APPLIED IN THE ABSENCE OF AGREEMENT AS TO THE EXACT RATE OF INTEREST.—** Although respondent did agree to the imposition of interest *per se,* the fact that there was never a clear rate of interest still leaves room to guess as to how much interest respondent will pay. This is precisely the reason why Article 1956 was included in the Civil Code - so that both parties clearly

agree to and are fully aware of the price to be paid in a contract. In the absence of agreement as to the exact rate of interest, the CA properly applied the legal rate of 6% annual interest following our ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals* and the *Bangko Sentral ng Pilipinas* MB Circular No. 799, series of 2013.

3. ID.; ID.; DAMAGES; ATTORNEY'S FEES; THE TEXT OF THE DECISION MUST STATE THE FACTUAL, LEGAL OR EQUITABLE JUSTIFICATION FOR THE AWARD OF ATTORNEY'S FEES.— [W]e find that the CA correctly deleted the award of attorney's fees for failure of the trial court to discuss the basis of such. As we have said in *Philippine Airlines, Inc. v. Court of Appeals,* "[c]urrent jurisprudence instructs that in awarding attorney's fees, the trial court must state the factual, legal, or equitable justification for awarding the same, bearing in mind that the award of attorney's fees is the exception, not the general rule, and it is not sound public policy to place a penalty on the right to litigate; nor should attorney's fees be awarded every time a party wins a lawsuit. The matter of attorney's fees cannot be dealt with only in the dispositive portion of the decision. The text of the decision must state the reason behind the award of attorney's fees. Otherwise, its award is totally unjustified."

APPEARANCES OF COUNSEL

Escudero Marasigan Vallente & E.H. Villareal for petitioner.
Dime and *Eviota Law Firm* for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review which seeks to assail the Decision[1] of the Court of Appeals (CA) dated January 30, 2012

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[1] *Rollo,* pp. 65-82; penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Jose C. Reyes, Jr. and Agnes Reyes-Carpio.

and its Resolution[2] dated August 17, 2012. The CA Decision modified the Regional Trial Court's (RTC) Decision[3] dated March 25, 2008 by ordering respondent to pay petitioner ₱24,622,394.72 with 6% legal interest per annum and deleting the award of ₱1,000,000.00 as attorney's fees.[4]

Factual Antecedents

Petitioner entered into an agreement with respondent whereby the former will deliver 45 automated teller machines (ATMs) and several computer hardware to respondent's customers for the total price of ₱24,743,610.43. On September 9, 2002, petitioner instituted a Complaint for sum of money, attorney's fees, costs of litigation with application for the issuance of a Writ of Preliminary Attachment[5] against respondent. In the said Complaint, petitioner sought to have respondent pay the former ₱45,997,266.22 representing respondent's unpaid obligation with 3% monthly interest.

In its Answer[6] dated June 17, 2003, respondent denied the allegations in the Complaint. Respondent also alleged that "[it] (had) fully paid for the fifty six (56) ATMs it purchased from [petitioner] during the period covering December 1997 to February 1998."[7]

Ruling of the Regional Trial Court

After trial, the RTC rendered its Decision dated March 25, 2008 ordering respondent to pay the sum of ₱46,036,028.42 with interest at 6% per annum from March 15, 2006 and attorney's

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[2] *Id*. at 84-85.

[3] *Id*. at 90-96; penned by Judge Antonio M. Eugenio, Jr. See also Records Vol. II, pp. 1023-1029.

[4] *Id*. at 81.

[5] Records, Vol. I, pp. 1-12. Docketed as Civil Case No. 02-104537.

[6] *Id*. at 556-566.

[7] *Id*. at 558.

fees in the amount of ₱1,000,000.00. The RTC debunked respondent's allegation of payment finding that respondent's only evidence – a handwritten memorandum of respondent's president – was not even verified by the finance or accounting employees of respondent and is overturned by petitioner's evidence that respondent's checks were all dishonored. As regards the computation of interest, the trial court found petitioner's imposition of 3% monthly interest appropriate as the rate was "imposed by [petitioner] on all invoices which have not been paid thirty (30) days from delivery with the exception of those invoices under dispute x x x. Furthermore, in the Deed of Assignment of Receivables of August 31, 1998, [respondent] tacitly acknowledged such imposition of interest x x x."[8]

The dispositive portion of the RTC Decision reads:

ACCORDINGLY, judgment is hereby rendered ordering defendant to pay plaintiff –

(1) the sum of ₱46,036,028.42 with interest at 6% per annum from March 15, 2006; and

(2) One Million (₱1,000,000.00) Pesos as attorney's fees.

The counterclaim interposed by defendant is hereby dismissed for utter lack of merit.

With costs against defendant.

SO ORDERED.[9]

Ruling of the Court of Appeals

Respondent elevated the matter via a Petition for *Certiorari*[10] before the CA. After both parties had filed their respective pleadings, the CA rendered its Decision dated January 30, 2012 partly granting respondent's Petition. It ordered respondent to pay petitioner ₱24,622,394.72 with 6% annual interest from

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[8] *Rollo,* pp. 95-96. See also Records, Vol. II at 1028-1029.

[9] *Id.* at 96.

[10] Records Vol. II, p. 1033.

the time of filing of the Complaint while it deleted the award of attorney's fees of ₱1,000,000.00. The CA found that there were certain pieces of evidence – particularly those relating to the imposition of 3% monthly interest – which were misappreciated by the trial court, thus, leading to a different conclusion.[11] Citing Article 1956[12] of the Civil Code, the CA found that "there is no showing that the parties had actually agreed on the imposition of the 3% monthly interest for invoices which remained unpaid 30 days from its delivery."[13] The CA explained that petitioner's reliance on its letter to respondent imposing the said interest cannot be used to bind respondent as the same was a unilateral imposition of interest, rather than a mutual agreement between the parties. The CA also brushed aside petitioner's claim that respondent assented to such interest rate when it executed a Deed of Assignment of Receivables on August 31, 1998 without any objection about the interest rate. Finding the 3% monthly interest invalid, the CA imposed the legal interest of 6% annual interest in consonance with Article 2209[14] of the Civil Code and will start from the time the unpaid amount is judicially demanded.[15] Lastly, the CA deleted the award of attorney's fees for failure of the trial court to discuss the basis for such award.[16]

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[11] *Rollo*, p. 71.

[12] Article 1956 of the Civil Code of the Philippines (R.A. No. 386) states:

Art. 1956. No interest shall be due unless it has been expressly stipulated in writing. (1755a)

[13] *Rollo*, p. 73.

[14] Art. 2209 of the Civil Code states:

Art. 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent *per annum.* (1108)

[15] See Art. 2212 of the Civil Code, which states:

Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point. (1109a)

[16] *Rollo,* p. 81.

The dispositive portion of the CA Decision reads:

WHEREFORE, all the foregoing considered, the extant appeal is PARTLY GRANTED and the Decision of the Regional Trial Court of Manila, Branch 24 dated March 25, 2008 is hereby MODIFIED as follows:

1) Prime Systems is hereby directed to pay IBM the sum of ₱24,622,394.72 with legal interest of 6% per annum from the filing of the complaint until full payment.

2) The awards of ₱1,000,000.00 as attorney's fees is hereby deleted.

SO ORDERED.[17]

Both parties filed their respective motions for reconsideration; petitioner prayed that the CA reverse its Decision of January 30, 2012 and reinstate the RTC's Decision dated March 25, 2008 while respondent sought to have the CA declare itself to have overpaid petitioner and the latter be directed to pay respondent ₱1,000,000.00 each in moral and exemplary damages.[18]

In a Resolution dated August 17, 2012, the CA denied both motions for reiterating issues which have been threshed out by the CA in its Decision dated January 30, 2012.

Unperturbed, petitioner filed the instant Petition for Review on *Certiorari*.

Issue

Brushing aside the factual issues of payment and delay,[19] the issue in the instant case is very simple: did petitioner's

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[17] *Id*.

[18] CA *rollo*, pp. 260 and 240.

[19] As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts. *Office of the Ombudsman v. Atty. Bernardo*, 705 Phil. 524, 534 (2013), citing *Office of the Ombudsman v. Racho*, 656 Phil. 148, 157 (2011).

imposition of 3% monthly interest constitute a written stipulation under Article 1956 of the Civil Code?

Our Ruling

We do not find merit in the instant Petition.

It has been a long-standing rule that for interest to become due and demandable, two requisites must be present: (1) that there must be an express stipulation for the payment of interest and (2) the agreement to pay interest is reduced in writing.[20]

Here, petitioner insists that there was an express agreement for a 3% monthly interest, which petitioner placed in writing in its letter dated December 29, 1997. Petitioner's conclusion that respondent agreed to the 3% monthly interest was based on the following events/evidence:

1. That respondent's employee duly received (hence, assented to) the letter dated December 29, 1997;[21]

2. That respondent did not object or comment to the letter after it received the same (thus, making respondent in estoppel);[22]

3. That respondent even asked for a reduction of the interest rate, which shows that respondent originally agreed to its December 29, 1997 letter;[23]

4. That even if the employee's act of receiving the letter was not an acceptance of the terms, the fact that respondent still wanted to push through with the delivery of the ATMs

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[20] See *De la Paz v. L & J Development Company, Inc.,* G.R. No. 183360, September 8, 2014, 734 SCRA 364, 374, *Siga-an v. Villanueva,* 596 Phil. 760, 769 (2009), *Ching v. Nicdao,* 550 Phil. 477, 499 (2007) and *Tan v. Valdehueza,* 160 Phil. 760, 767 (1975).

[21] *Rollo*, p. 33.

[22] *Id*. at 34, 38.

[23] *Id*.

in 1998, one year after the letter, shows that respondent knew and agreed to the 3% monthly interest;[24] and

5. That the parties entered into an Agreement for Assignment of Receivables and that respondent executed an Assignment of Receivables - which documents expressly stated that interest was to be included in the unpaid balance.[25]

Petitioner has gone through great lengths to attribute respondent's alleged silence, coupled with respondent's request for the reduction of monthly interest to the latter's express agreement to a 3% monthly interest. Nothing could be further from the truth.

Using the enumeration above, this Court finds that the evidence points to respondent's lack of consent to a 3% monthly interest. Petitioner adamantly claims that respondent's act of requesting for a lower interest rate shows the latter's agreement to a 3% monthly interest. Such an askewed reasoning escapes us – especially here where respondent's ***authorized*** representative never assented to petitioner's letter. To accept petitioner's misplaced argument that the parties mutually agreed to a 3% monthly interest when respondent subsequently ordered ATMs despite receiving petitioner's letter imposing a 3% monthly interest will render the second condition – that the agreement be reduced in writing – futile. Although respondent did agree to the imposition of interest *per se*, the fact that there was never a clear rate of interest still leaves room to guess as to how much interest respondent will pay. This is precisely the reason why Article 1956 was included in the Civil Code – so that both parties clearly agree to and are fully aware of the price to be paid in a contract.

In the absence of agreement as to the exact rate of interest, the CA properly applied the legal rate of 6% annual interest following our ruling in *Eastern Shipping Lines, Inc. v. Court*

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[24] *Id*. at 40.

[25] *Id*. at 43.

of Appeals[26] and the *Bangko Sentral ng Pilipinas* MB Circular No. 799, series of 2013.[27]

Finally, we find that the CA correctly deleted the award of attorney's fees for failure of the trial court to discuss the basis of such. As we have said in *Philippine Airlines, Inc. v. Court of Appeals,*[28] "[c]urrent jurisprudence instructs that in awarding attorney's fees, the trial court must state the factual, legal, or equitable justification for awarding the same, bearing in mind

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[26] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95-96, In *Eastern Shipping Lines*, this Court enumerated guidelines on the imposition of legal interest:

x x x x x x x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

x x x x x x x x x

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date of the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount of finally adjudged. x x x (citations omitted)

[27] BSP-MB Circular No. 799, series of 2013 states:

Section 1. The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.

Section 2. In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Instutions are hereby amended accordingly.

[28] 587 Phil. 568 (2008).

that the award of attorney's fees is the exception, not the general rule, and it is not sound public policy to place a penalty on the right to litigate; nor should attorney's fees be awarded every time a party wins a lawsuit. The matter of attorney's fees cannot be dealt with only in the dispositive portion of the decision. The text of the decision must state the reason behind the award of attorney's fees. Otherwise, its award is totally unjustified."[29]

WHEREFORE, the Petition is **DENIED**. No pronouncement as to costs.

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 217024. August 15, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODEL BOLO *y* MALDO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE ANTI-RAPE LAW OF 1997 (R.A. NO. 8353); RAPE CAN BE COMMITTED THROUGH SEXUAL INTERCOURSE, ALSO KNOWN AS "ORGAN RAPE" OR "PENILE RAPE," AND BY SEXUAL ASSAULT, ALSO CALLED "INSTRUMENT OR OBJECT RAPE," OR "GENDER-FREE RAPE".— The enactment of

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[29] *Id*. at 582, citing *Serrano v. Spouses Gutierrez,* 537 Phil. 187, 198 (2006); *Buñing v. Santos,* 533 Phil. 610, 617 (2006); *Ballesteros v. Abion,* 517 Phil. 253, 268-269 (2006); and *Villanueva v. Spouses Salvador*, 515 Phil. 672, 683 (2006).

Republic Act (*RA*) No. 8353 or the *Anti-Rape Law of 1997*, revolutionized the concept of rape with the reclassification of rape as a crime against persons and the introduction of rape by "sexual assault" as differentiated from the traditional "rape through carnal knowledge" or "rape through sexual intercourse." By virtue of said Act, the provision on rape in the RPC was incorporated with Article 266-A providing for the elements of the crime of rape x x x. Under the new provision, x x x rape can now be committed in two ways: (1) through sexual intercourse under Article 266-A, paragraph 1, also known as "organ rape" or "penile rape," the central element of which is carnal knowledge, which must be proven beyond reasonable doubt; and (2) by sexual assault under Article 266-A, paragraph 2, also called "instrument or object rape," or "gender-free rape," which must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.

2. ID.; ID.; RAPE BY SEXUAL ASSAULT; ELEMENTS.— The elements of the crime of rape by sexual assault are: (1) That the offender commits an act of sexual assault; (2) That the act of sexual assault is committed by any of the following means: (a) By inserting his penis into another person's mouth or anal orifice; or (b) By inserting any instrument or object into the genital or anal orifice of another person; (3) That the act of sexual assault is accomplished under any of the following circumstances: (a) By using force and intimidation; (b) When the woman is deprived of reason or otherwise unconscious; or (c) By means of fraudulent machination or grave abuse of authority; or (d) When the woman is under 12 years of age or demented.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; SINCE RAPE IS A CRIME THAT IS ALMOST ALWAYS COMMITTED IN ISOLATION, USUALLY LEAVING ONLY THE VICTIMS TO TESTIFY ON THE COMMISSION OF THE CRIME, FOR AS LONG AS THE VICTIM'S TESTIMONY IS LOGICAL, CREDIBLE, CONSISTENT AND CONVINCING, THE ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS THEREOF.— [B]oth the trial and appellate courts conclusively found appellant guilty beyond reasonable doubt of the crime of rape by sexual assault for inserting his finger inside his daughter's vagina. Accordingly, the Court does not

find any reason to depart from the findings of the courts below. In resolving rape cases, the Court has always given primordial consideration to the credibility of the victim's testimony. Since rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof.

4. **ID.; ID.; ID.; UNLESS THERE APPEARS CERTAIN FACTS OR CIRCUMSTANCES OF WEIGHT AND VALUE WHICH THE LOWER COURT OVERLOOKED OR MISAPPRECIATED AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE, THE TRIAL COURT'S CONCLUSIONS ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY.—** [T]he courts below expressly found that AAA testified on the event that transpired in a straightforward, consistent and coherent manner. As aptly observed by the RTC, she clearly narrated on the fact that while she was standing by the gate of her maternal aunt's house one evening, appellant kissed her on the neck and inserted his finger in her vagina. It is evident from AAA's positive and consistent testimony that appellant inserted his finger inside her vagina. Thus, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.

5. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE CHARACTER OF THE CRIME IS NOT DETERMINED BY THE SPECIFICATION OF LAW BUT BY THE RECITAL OF THE ULTIMATE FACT AND CIRCUMSTANCES OF THE CASE; THE PROSECUTION'S FAILURE TO SPECIFY THE EXACT TIME AND PLACE OF THE COMMISSION OF THE CRIME DOES NOT CALL FOR APPELLANT'S ACQUITTAL FOR THEY ARE NOT ELEMENTS OF THE CRIME OF RAPE.—** The fact that the Information did not specifically state therein that appellant was being charged with

"rape in violation of Article 266-A, paragraph 2 of the Revised Penal Code" does not automatically result in the violation of his constitutional right to be informed of the nature and cause of the accusation against him. As the CA properly ratiocinated, while the Information failed to specify the particular provision of law which appellant allegedly violated, the character of the crime is not determined by the specification of law but by the recital of the ultimate fact and circumstances of the case. Hence, since the body of the Information clearly alleged that appellant, through force and intimidation, inserted his finger into AAA's vagina, a minor, thereby enumerating all the essential elements of the crime, appellant is considered sufficiently apprised of the charge against him. Similarly, the prosecution's failure to specify the exact time and place of the commission of the crime does not call for appellant's acquittal for they are not elements of the crime of rape.

6. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; ELEMENTS.—** Article 266-B of the RPC provides that rape by sexual assault is punishable by *prision mayor*. When, however, the rape is committed with any of the ten (10) aggravating/qualifying circumstances mentioned in said article, the penalty shall then be *reclusion temporal*. The first circumstance qualifies the offense when the victim is under 18 years of age and 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. Hence, for a conviction of qualified rape, the prosecution must prove that (1) the victim is under eighteen years of age at the time of the rape, and (2) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.

7. **ID.; ID.; ID.; THE MINORITY OF THE VICTIM AND THE RELATIONSHIP OF THE OFFENDER TO THE VICTIM MUST BOTH BE ALLEGED IN THE INFORMATION AND DULY PROVED CLEARLY AND INDUBITABLY AS THE CRIME ITSELF.—** [J]urisprudence dictates that the minority of the victim and the relationship of the offender to the victim must both be alleged in the Information and duly proved clearly and indubitably as the crime itself. They must be lumped together and their concurrence constitutes only one special qualifying circumstance. In other words, it is the concurrence of both the minority of the victim and her relationship with the offender

that will be considered as a special qualifying circumstance. In the instant case, the relationship of the appellant as father of AAA was admitted in open court by appellant, which is conclusive to prove his relationship with the victim. However, although there is no showing that appellant similarly admitted AAA's minority, the RTC and the CA were correct in taking judicial notice of the age of the victim, she being alleged to be merely four (4) years old at the time of the commission of the offense on April 9, 2007 and five (5) years of age when she testified in court on June 24, 2008.

8. ID.; ID.; ID.; ID.; QUALIFYING CIRCUMSTANCE OF MINORITY OF THE VICTIM; NON-PRESENTATION OF THE ORIGINAL OR DULY CERTIFIED BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR SCHOOL RECORDS NOT FATAL, AS THE MINORITY OF THE VICTIM MAY BE ESTABLISHED BY MEDICO-LEGAL REPORTS AND OTHER EVIDENCE ON RECORD. — True, the Court laid down the controlling guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance in *People v. Pruna*, x x x. Nevertheless, despite the foregoing and in the interest of justice and fairness, the pieces of evidence and the circumstances of the instant case should be appreciated in determining whether the age of the victim was actually established by the prosecution. x x x. In the case at bar, several documents were presented in court indicating the very young age of the victim x x x. [The] pieces of evidence, together with the physical appearance of the victim when she testified, would have been sufficient basis for the lower court to ascertain the tender age of the victim when the crime was committed. Furthermore, the Medico-Legal Report prepared by Police S/Insp. Dr. Ebdane, a government physician who took an oath as a civil service official, means that she is competent to examine persons and issue medical certificates which will be used by the government. As such, the Medico-Legal Report carries the presumption of regularity in the performance of her functions and duties. As regards the other documents, under Section 44, Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. To be sure, in the absence of proof to the contrary, law enforcement agencies of the government similarly enjoy the presumption of regularity in the performance of their official

functions. Verily, if baptismal certificates or school records are allowed to be presented in court to establish the age of the victim in the absence of a birth certificate, with more reason should Medico-Legal Reports and comparable documents be allowed to ascertain such circumstance in similar cases. Consequently, notwithstanding the fact that AAA's original or duly certified birth certificate, baptismal certificate or school records, were never presented by the prosecution, the Court agrees with the lower court and the appellate court that AAA's minority was duly established by the evidence on record.

9. ID.; ID.; QUALIFIED RAPE THROUGH SEXUAL ASSAULT; PROPER PENALTY.— As to the imposable penalty, the crime committed was qualified rape through sexual assault. Having been established that AAA was under 18 years of age at the time of the crime and that appellant is her father, a qualifying circumstance, the proper penalty to be imposed should be *reclusion temporal.* Applying the Indeterminate Sentence Law, there being no mitigating or other aggravating circumstance, the penalty should be within the range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, and six (6) years and one (1) day to twelve (12) years of *prision mayor,* as minimum. In this respect, the penalty to be imposed is an indeterminate penalty of nine (9) years of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*, as maximum.

10. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED APPELLANT.— With respect to the award of damages, in rape cases, the award of civil indemnity is mandatory upon proof of the commission of rape, whereas moral damages are automatically awarded without the need to prove mental and physical suffering and that exemplary damages are also imposed, as example for the public good and to protect minors from all forms of sexual abuse. Consequently, the Court affirms the ruling of the CA awarding the sums of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for being in line with prevailing jurisprudence. Likewise, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of the Decision until full payment.

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

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated March 12, 2014 of the Court Appeals (*CA*) in CA-G.R. CR-HC No. 05676 which affirmed the Decision[2] dated December 7, 2011 of the Regional Trial Court (*RTC*), National Capital Judicial Region, Branch 86, Quezon City, in Criminal Case No. Q-07-146758 for rape.

The antecedent facts are as follows:

In an Information[3] dated April 13, 2007, accused-appellant Rodel Bolo y Maldo was charged with the crime of rape by sexual assault under Article 266-A, paragraph 2, in relation to Article 266-B of the Revised Penal Code (*RPC*), committed by inserting his finger into the vagina of his 4-year- old daughter, AAA,[4] against her will and without her consent. The accusatory portion of said Information reads:

That on or about the 9th day of April, 2007, in Quezon City, Philippines, the said accused, by means of force and intimidation, did then and there, wilfully, unlawfully and feloniously insert his

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Mariflor P. Punzalan Castillo and Pedro B. Corales concurring; *rollo*, pp. 3-20.

[2] Penned by Judge Roberto P. Buenaventura.; CA *rollo*, pp. 17-21.

[3] *Rollo,* p. 7.

[4] In line with the Court's ruling in *People v. Cabalquinto*, 533 Phil. 703, 709 (2006), citing Rule on Violence Against Women and their Children, Sec. 40, Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real name of the rape victim will not be disclosed.

finger into the vagina of AAA, a minor, 4 years of age, his daughter, against her will and without her consent, to the damage and prejudice of the said offended party.

Contrary to law.[5]

Upon arraignment, appellant pleaded not guilty to the offense charged.[6] Thereafter, during trial, the prosecution presented the testimonies of the victim, AAA, the Medico-Legal Officer, Police S/Insp. Dr. Marianne S. Ebdane (*S/Insp. Ebdane*), and PO1 Simeon Masangaya.[7]

According to AAA, while she was standing by the gate of her maternal aunt's house in the evening of April 9, 2007, appellant kissed her on the neck and inserted his finger in her vagina. Consequently, she felt pain and, thereafter, she told the incident to her grandmother who brought her to the police station.[8] Two (2) days after, acting on a request from Police Supt. Constante Agpaoa, Police S/Insp. Dr. Ebdane conducted a genital examination on AAA. In her Initial Medico-Legal Report, she stated that there was no evidence of injury or laceration on AAA's hymen. She explained that, generally, an insertion of a finger can cause irritation or redness of a victim's genetalia. But from the time of the occurrence of the incident up to the genital examination, however, fourteen (14) hours had already lapsed indicating that any redness or irritation may have been already cured. She further explained that her finding that "there is no evident injury at the time of the examination and medical evaluation cannot exclude sexual abuse," meant that it was still possible for penetration to occur without injury on the hymen because AAA was only four (4) years old and the hymen of a child was elastic.[9]

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[5] CA *rollo*, p. 7.

[6] *Rollo,* p. 4.

[7] *Id.*

[8] *Id*. at 5.

[9] *Id*.

In contrast, the defense presented the lone testimony of appellant himself, who simply denied the charges against him.[10] He claimed that while he was indeed with AAA, he could not have possibly raped his own daughter for at the time of the alleged incident, he was engaged in a drinking session with a *kumpadre*. He added that the charge was merely fabricated by his mother-in-law who was mad at him for using *sumpak* and disturbing their place.[11]

On December 7, 2011, the RTC found appellant guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 2, in relation to Article 266-B of the RPC, and sentenced him to suffer the penalty of *reclusion perpetua* and to pay AAA the amount of ₱75,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages, plus costs of the suit. The dispositive portion of its Decision reads:

> WHEREFORE, the accused Rodel Bolo y Maldo is hereby found guilty beyond reasonable doubt and convicted of Rape under Article 266-A, par. 2, in relation to Article 266-B, and he is hereby sentenced to suffer the penalty of *reclusion perpetua.*
>
> The accused is adjudged liable to pay the victim: (1) Seventy-Five Thousand Pesos (₱75,000.00) by way of civil indemnity *ex delicto*; (2) moral damages in the amount of Fifty Thousand Pesos (₱50,000.00); (3) Twenty-Five Thousand Pesos (₱25,000.00) as exemplary damages; (4) as well as cost of suit.
>
> SO ORDERED.[12]

According to the RTC, the prosecution was able to successfully prove the presence of all the elements of the crime charged herein in view of the fact that AAA testified on the event that transpired in a straightforward, consistent and coherent manner. She clearly narrated on the fact that while she was standing by the gate of her maternal aunt's house one evening, appellant

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[10] *Id.* at 6.

[11] *Id*.

[12] CA *rollo*, p. 21.

kissed her on the neck and inserted his finger in her vagina.[13] The trial court added that while there is no finding of any injury upon physical examination of AAA, the Medico-Legal Examiner explained that the absence of a laceration was due to the elasticity of the minor's hymen, making it possible for there to be penetration without breakage or injury.[14] Nevertheless, it was ruled that full penetration, which would ordinarily result in hymenal rupture or laceration of the vagina, is not a consummating ingredient of the crime of rape. Furthermore, the court took note of the fact that all that appellant could offer was mere denial. He even admitted that he was with his daughter on the date of the alleged incident. While he claimed to have been engaged in a drinking session with a *kumpadre*, it was only from morning until the afternoon whereas the assault allegedly took place in the evening. Besides, the RTC added that said claim was, at best, self-serving for said *kumpadre* was never presented in court.[15]

On appeal, the CA affirmed the RTC Decision with modification, *viz.*:

> **ACCORDINGLY**, the appeal is **DENIED**. The Decision dated December 7, 2011 is **MODIFIED**, imposing upon the appellant an indeterminate penalty of **12 years of prision mayor, as minimum, to 20 years of reclusion temporal, as maximum**, and directing him to pay ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. The Decision is **AFFIRMED** in all other respects.
>
> **SO ORDERED**.[16]

First, the CA rejected appellant's contention that the Information was defective as it failed to specify the exact nature of the charge against him. While the Information failed to specify

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[13] *Id.* at 18.

[14] *Id.* at 19.

[15] *Id.* at 21.

[16] *Rollo*, pp. 19-20. (Emphasis in the original)

the particular provision of law which appellant allegedly violated, the character of the crime is not determined by the specification of law but by the recital of the ultimate facts and circumstances of the case.[17] Since the body of the Information herein clearly alleged that appellant, through force and intimidation, inserted his finger into his daughter's vagina, a minor, thereby enumerating all the essential elements of the crime, appellant is considered sufficiently apprised of the charge against him.[18] *Second*, the CA reiterated the trial court's finding that hymenal rupture, vaginal laceration, or genital injury is not indispensable because the same is not an element of the crime of rape. AAA's testimony that she felt pain in her vagina during the sexual assault sufficiently corroborated her testimony that she was raped by appellant. Moreover, appellant's allegation that the crime charged was merely fabricated by his mother-in-law deserves scant consideration for it is highly unbelievable that a grandmother would expose her granddaughter to humiliation and the stigma of rape trial just to punish appellant for his alleged misdeeds.[19] *Third*, the appellate court likewise rejected appellant's claim for acquittal due to the prosecution's failure to prove the exact date and place of the commission of the crime. According to the CA, the same are not elements of the crime for what is decisive herein is the act of sexual assault.[20]

As for the imposable penalty, the appellate court held that under Article 266-B of the RPC, the penalty imposable for rape by sexual assault is *prision mayor* but is increased to *reclusion temporal* if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in the article. Here, the CA found that the prosecution successfully proved the qualifying circumstances of relationship and minority. With respect to the circumstance of relationship, there was no dispute that appellant is AAA's father, for appellant even admitted to such fact during

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[17] *Id*. at 10.

[18] *Id*. at 11.

[19] *Id*. at 15.

[20] *Id*. at 16.

trial. As for minority, the CA initially acknowledged the prosecution's failure to present the original or certified true copy of AAA's certificate of birth, or in their absence, similar authentic documents such as her baptismal certificate and school records. It nevertheless appreciated said qualifying circumstance ratiocinating that while it is settled that minority must be proved by independent evidence, other than the testimonies of prosecution witnesses and the absence of denial by the accused, the same is subject to the exception that the court can take judicial notice of the victim's minority when the fact of her being below the age of 10 is quite manifest. The trial court in this case would not have any difficulty ascertaining AAA's age from her appearance who was only 5 years old when she testified that she was raped by appellant. Thus, applying the Indeterminate Sentence Law, the CA held that the maximum penalty shall be taken from the maximum period of the imposable penalty which is *reclusion temporal*, ranging from 17 years, 4 months, and 1 day to 20 years, while the minimum shall be taken from the penalty next lower in degree which is *prision mayor* ranging from 10 years and 1 day to 12 years.

Consequently, appellant filed a Notice of Appeal[21] on August 29, 2014. Thereafter, in a Resolution[22] dated June 22, 2015, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

THE [COURT OF APPEALS] ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE FAILURE OF THE

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[21] *Id.* at 21.

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

PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[23]

Appellant reiterated the following arguments he raised before the appellate court: (1) the Information filed against him was defective as it failed to specify the exact nature of the charge against him; (2) the prosecution failed to prove by convincing proof the elements of the crime charged; (3) the prosecution failed to establish the exact time and place of the commission of the crime: (4) the prosecution failed to offer the original or certified true copy of the Certificate of Live Birth of AAA, and consequently, (5) the qualifying circumstance of minority and relationship were not proven beyond reasonable doubt.

We affirm appellant's conviction, but not of rape by sexual assault in its qualified form.

The enactment of Republic Act (*RA*) No. 8353 or the *Anti-Rape Law of 1997*, revolutionized the concept of rape with the reclassification of rape as a crime against persons and the introduction of rape by "sexual assault" as differentiated from the traditional "rape through carnal knowledge" or "rape through sexual intercourse."[24] By virtue of said Act, the provision on rape in the RPC was incorporated with Article 266-A providing for the elements of the crime of rape:

> Article 266-A. *Rape: When And How Committed*. "Rape is committed:
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
> b) When the offended party is deprived of reason or otherwise unconscious;
> c) By means of fraudulent machination or grave abuse of authority; and

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[23] CA *rollo*, p. 38.

[24] *People v. Pareja*, 724 Phil. 759, 781 (2014).

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;

2. By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[25]

Under the new provision, therefore, rape can now be committed in two ways: (1) through sexual intercourse under Article 266-A, paragraph 1, also known as "organ rape" or "penile rape," the central element of which is carnal knowledge, which must be proven beyond reasonable doubt; and (2) by sexual assault under Article 266-A, paragraph 2, also called "instrument or object rape," or "gender-free rape," which must be attended by any of the circumstances enumerated in subparagraphs (a) to (d) of paragraph 1.[26]

Thus, the elements of the crime of rape by sexual assault are:

(1) That the offender commits an act of sexual assault;

(2) That the act of sexual assault is committed by any of the following means:

   (a) By inserting his penis into another person's mouth or anal orifice; or

   (b) By inserting any instrument or object into the genital or anal orifice of another person;

(3) That the act of sexual assault is accomplished under any of the following circumstances:

   (a) By using force and intimidation;

   (b) When the woman is deprived of reason or otherwise unconscious; or

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[25] Article 266-A of the Revised Penal Code (1930), as amended by Republic Act No. 8353 (1997). (Emphasis ours)

[26] *People v. Pareja, supra* note 24, at 782.

(c) By means of fraudulent machination or grave abuse of authority; or

(d) When the woman is under 12 years of age or demented.[27]

In the instant case, both the trial and appellate courts conclusively found appellant guilty beyond reasonable doubt of the crime of rape by sexual assault for inserting his finger inside his daughter's vagina. Accordingly, the Court does not find any reason to depart from the findings of the courts below. In resolving rape cases, the Court has always given primordial consideration to the credibility of the victim's testimony. Since rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof.[28]

Here, the courts below expressly found that AAA testified on the event that transpired in a straightforward, consistent and coherent manner. As aptly observed by the RTC, she clearly narrated on the fact that while she was standing by the gate of her maternal aunt's house one evening, appellant kissed her on the neck and inserted his finger in her vagina. We quote AAA's testimony on the matter:

Q: AAA, what did Rodel Bolo do to you?
A: He kissed me.

Q: And Rodel is your father?
A: Yes, sir.

Q: What else did he do to you?
A: "Dinukot and pepe ko."

Q: By a finger?
A: (Witness showing her forefinger)

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[27] *People v. Soria*, 698 Phil. 676, 693-694 (2012). (Citation omitted)

[28] *People v. Gallano*, G.R. No. 184762, February 25, 2015, 752 SCRA 1, 9.

Q: What did you feel when your father inserted his finger into your vagina?
A: It was painful.

Q: Where did he do that?
A: Outside the gate of CCC.

Q: Who is this CCC?
A: The sister of my mother.

Q: Who was your companion at that time aside from your father?
A: No one. We were only two (2), my father and I.

Q: Did he tell you something while he was doing that insertion of the finger?
A: None, sir.

x x x x x x x x x

Q: Does (appellant) normally do that to you?
A: No, sir.

Q: So that was the first time?
A: Yes, sir.

Q: Is your father present in this court?
A: Yes. (Witness pointing to the accused who gave his name as Rodel Bolo).[29]

It is evident from AAA's positive and consistent testimony that appellant inserted his finger inside her vagina. Thus, unless there appears certain facts or circumstances of weight and value which the lower court overlooked or misappreciated and which, if properly considered, would alter the result of the case, the trial court's conclusions on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality.[30]

The fact that the Information did not specifically state therein that appellant was being charged with "rape in violation of Article 266-A, paragraph 2 of the Revised Penal Code" does not

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[29] *Rollo*, pp. 11-12.

[30] *People v. Padilla*, 617 Phil. 170, 183 (2009).

automatically result in the violation of his constitutional right to be informed of the nature and cause of the accusation against him. As the CA properly ratiocinated, while the Information failed to specify the particular provision of law which appellant allegedly violated, the character of the crime is not determined by the specification of law but by the recital of the ultimate fact and circumstances of the case. Hence, since the body of the Information clearly alleged that appellant, through force and intimidation, inserted his finger into AAA's vagina, a minor, thereby enumerating all the essential elements of the crime, appellant is considered sufficiently apprised of the charge against him. Similarly, the prosecution's failure to specify the exact time and place of the commission of the crime does not call for appellant's acquittal for they are not elements of the crime of rape.

Article 266-B of the RPC provides that rape by sexual assault is punishable by *prision mayor*. When, however, the rape is committed with any of the ten (10) aggravating/qualifying circumstances mentioned in said article, the penalty shall then be *reclusion temporal*. The first circumstance[31] qualifies the offense when the victim is under 18 years of age and 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. Hence, for a conviction of qualified rape, the prosecution must prove that (1) the victim is under eighteen years of age at the time of the rape, and (2) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim.[32] Verily, jurisprudence dictates that the minority of the victim and the relationship of the offender to the victim must both be alleged in the Information and duly proved clearly and indubitably as the crime itself.

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[31] Section 1 of Article 266-B of the Revised Penal Code provides:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, stepparent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

[32] *People v. Reman Sariego*, G.R. No. 203322, February 24, 2016.

They must be lumped together and their concurrence constitutes only one special qualifying circumstance.[33] In other words, it is the concurrence of both the minority of the victim and her relationship with the offender that will be considered as a special qualifying circumstance.[34]

In the instant case, the relationship of the appellant as father of AAA was admitted in open court by appellant, which is conclusive to prove his relationship with the victim.[35] However, although there is no showing that appellant similarly admitted AAA's minority, the RTC and the CA were correct in taking judicial notice of the age of the victim, she being alleged to be merely four (4) years old at the time of the commission of the offense on April 9, 2007 and five (5) years of age when she testified in court on June 24, 2008.

True, the Court laid down the controlling guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance in *People v. Pruna*,[36] to wit*:*

> In order to remove any confusion that may be engendered by the foregoing cases, we hereby set the following guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance.
>
> 1. The best evidence to prove the age of the offended party is an original or certified true copy of the certificate of live birth of such party.
>
> 2. In the absence of a certificate of live birth, similar authentic documents such as baptismal certificate and school records which show the date of birth of the victim would suffice to prove age.
>
> 3. If the certificate of live birth or authentic document is shown to have been lost or destroyed or otherwise unavailable, the testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters

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[33] *People v. Lomaque*, 710 Phil. 338, 354 (2013).

[34] *People v. Reman Sariego*, *supra* note 32.

[35] *People v. Soria,* 698 Phil. 676, 696 (2012).

[36] 439 Phil. 440 (2002).

respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be sufficient under the following circumstances:

> a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
>
> b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
>
> c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.

4. In the absence of a certificate of live birth, authentic document, or the testimony of the victim's mother or relatives concerning the victim's age, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

5. It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him.

6. The trial court should always make a categorical finding as to the age of the victim.[37]

Nevertheless, despite the foregoing and in the interest of justice and fairness, the pieces of evidence and the circumstances of the instant case should be appreciated in determining whether the age of the victim was actually established by the prosecution.

In the case at bar, several documents were presented in court indicating the very young age of the victim; *first*, while assisted by her grandmother, AAA stated in her *Sinumpaang Salaysay*[38] that she was five (5) years of age; *second*, the Request for Genital Exam[39] indicated that AAA was five (5) years old; *third*, the Sexual Crime (Protocol) Form[40] stated that the age of AAA

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[37] *People v. Pruna, supra,* at 470-471. (Citation omitted)

[38] Records, p. 4.

[39] *Id.* at 17.

[40] *Id.* at 19.

was five (5) years old; *fourth*, the Initial Medico-Legal Report[41] showed that AAA was five (5) years of age; *fifth*, Medico-Legal Report No. R07-757 reflected that AAA was five (5) years old; *sixth,* the personal circumstances of the victim when she testified on June 24, 2008 stated that AAA was five (5) years old and she likewise answered that she was five (5) years old when asked about her age;[42] and *seventh*, the accused failed to controvert that AAA was four (4) years old at the time the crime was committed when the court inquired about it while he was testifying.[43]

In this particular case, these pieces of evidence, together with the physical appearance of the victim when she testified, would have been sufficient basis for the lower court to ascertain the tender age of the victim when the crime was committed. Furthermore, the Medico-Legal Report prepared by Police S/Insp. Dr. Ebdane, a government physician who took an oath as a civil service official, means that she is competent to examine persons and issue medical certificates which will be used by the government. As such, the Medico-Legal Report carries the presumption of regularity in the performance of her functions and duties.[44] As regards the other documents, under Section 44,[45] Rule 130, Revised Rules of Court, entries in official records made in the performance of official duty are *prima facie* evidence of the facts therein stated. To be sure, in the absence of proof to the contrary, law enforcement agencies of the government similarly enjoy the presumption of regularity in the performance of their official functions.[46] Verily, if

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[41] *Id*. at 20.

[42] TSN, June 24, 2008, p. 8.

[43] TSN, April 27, 2011, p. 6.

[44] See *People v. Dela Cruz y Dacillo*, 452 Phil. 1080, 1094 (2003).

[45] Rule 130, Section 44. *Entries in official records*. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

[46] *People v. Dela Cruz y Dacillo, supra* note 44.

baptismal certificates or school records are allowed to be presented in court to establish the age of the victim in the absence of a birth certificate, with more reason should Medico-Legal Reports and comparable documents be allowed to ascertain such circumstance in similar cases.

Consequently, notwithstanding the fact that AAA's original or duly certified birth certificate, baptismal certificate or school records, were never presented by the prosecution, the Court agrees with the lower court and the appellate court that AAA's minority was duly established by the evidence on record. Additionally, the CA, citing *People v. Tipay*,[47] aptly concluded that the presentation of the certificate of birth is not at all times necessary to prove minority. The minority of a victim of tender age who may be below the age of ten is quite manifest and the court can take judicial notice thereof. The crucial years pertain to the ages of fifteen to seventeen where minority may seem to be dubitable due to one's physical appearance.[48]

As to the imposable penalty, the crime committed was qualified rape through sexual assault. Having been established that AAA was under 18 years of age at the time of the crime and that appellant is her father, a qualifying circumstance, the proper penalty to be imposed should be *reclusion temporal.* Applying the Indeterminate Sentence Law, there being no mitigating or other aggravating circumstance, the penalty should be within the range of fourteen (14) years, eight (8) months and one (1) day to seventeen (17) years and four (4) months of *reclusion temporal* medium, as maximum, and six (6) years and one (1) day to twelve (12) years of *prision mayor*, as minimum. In this respect, the penalty to be imposed is an indeterminate penalty of nine (9) years of *prision mayor,* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as maximum.

With respect to the award of damages, in rape cases, the award of civil indemnity is mandatory upon proof of the

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[47] 385 Phil. 689 (2000).

[48] *People v. Tipay, supra*, at 718.

commission of rape, whereas moral damages are automatically awarded without the need to prove mental and physical suffering and that exemplary damages are also imposed, as example for the public good and to protect minors from all forms of sexual abuse.[49] Consequently, the Court affirms the ruling of the CA awarding the sums of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, for being in line with prevailing jurisprudence.[50] Likewise, all damages awarded shall earn interest at the rate of 6% *per annum* from date of finality of the Decision until full payment.[51]

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision dated March 12, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05676 finding appellant Rodel Bolo y Maldo guilty beyond reasonable doubt of the crime of qualified rape through sexual assault under Article 266-A, paragraph 2, in relation to Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, directing him to pay AAA the amount of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages, with **MODIFICATIONS** that the indeterminate penalty imposed shall be nine (9) years of *prision mayor,* as minimum, to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal,* as maximum, and that an interest be imposed on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Perlas-Bernabe,*[*] *JJ.,* concur.

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[49] *People v. Jose Salvador, a.k.a. "Felix,"* G.R. No. 207815, June 22, 2015.

[50] *Id*.

[51] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013).

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated May 13, 2015.

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— The divergence in the findings of fact by the Labor Arbiter and the CA, on the one hand, and that of the NLRC on the other is a recognized exception for the Court to open and scrutinize the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC in ruling that petitioners were illegally dismissed. (Torrefiel *vs.* Beauty Lane Phils., Inc., G.R. No. 214186, Aug. 3, 2016) p. 464

— The general rule is that petitions for review on *certiorari* filed under this rule shall raise only questions of law that must be distinctly set forth; questions of fact, which exist when the doubt centers on the truth or falsity of the alleged facts, are not reviewable. (Dela Cruz *vs.* People, G.R. No. 163494, Aug. 3, 2016) p. 214

— The issue of whether a mortgagee is in good faith cannot be entertained in a Rule 45 petition; this is because the ascertainment of good faith or the lack thereof and the determination of negligence are factual matters which lay outside the scope of a petition for review on *certiorari.* (PNB *vs.* Vila, G.R. No. 213241, Aug. 1, 2016) p. 86

— The question of whether a person is a purchaser in good faith is a factual matter that generally will not be delved into by the Supreme Court as it is not a trier of facts. (Ranara, Jr. *vs.* De Los Angeles, Jr., G.R. No. 200765, Aug. 8, 2016) p. 571

— While the question may seemingly present a factual issue that is beyond the scope of a petition for review on *certiorari*, it is in essence a question of law as it concerns the correct application of law or jurisprudence to a certain set of facts. (Dela Cruz *vs.* People, G.R. No. 163494, Aug. 3, 2016) p. 214

Points of law, theories, issues and arguments — Basic considerations of due process and fairness impel this adherence, for it would be violative of the right to be heard as well as unfair to the parties and to the administration of justice if the points of law, theories,

important because it creates the presumption that the same issuer knew of the insufficiency of the funds; it is also essential for the maker or drawer to be notified of the dishonor of her check, so she could pay the value thereof or make arrangements for its payment within the period prescribed by law. (*Id.*)

Violation of — The absence of proof that petitioner received any notice informing her of the fact that her checks were dishonored and giving her five banking days within which to make arrangements for payment of the said checks prevents the application of the disputable presumption that she had knowledge of the insufficiency of her funds at the time she issued the checks; absent such presumption, the burden shifts to the prosecution to prove that petitioner had knowledge of the insufficiency of her funds when she issued the said checks, otherwise, she cannot be held liable under the law. (Alburo *vs.* People, G.R. No. 196289, Aug. 15, 2016) p. 876

— The finding of no criminal liability for violation thereof due to lack of sufficient proof does not prejudice the civil aspects of the transaction between the parties. (*Id.*)

— The prosecution must prove the following essential elements, namely: (1) The making, drawing, and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue there were no sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) The dishonor of the check by the drawee bank for insufficiency of funds or credit or the dishonor for the same reason had not the drawer, without any valid cause, ordered the drawee bank to stop payment. (*Id.*)

— The State should present the giving of a written notice of the dishonor to the drawer, maker or issuer of the dishonored check; to hold a person liable under B.P. Blg. 22, the prosecution must not only establish that a check was issued and that the same was subsequently dishonored, it must further be shown that accused knew

adequate remedy in the ordinary course of law; without jurisdiction means that the court acted with absolute lack of authority; there is excess of jurisdiction when the court transcends its power or acts without any statutory authority; grave abuse of discretion implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction. (*Id.*)

— To justify the grant of the extraordinary remedy of *certiorari*, it must be satisfactorily shown that the court or quasi-judicial authority gravely abused the discretion conferred upon it; grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. (Torrefiel *vs.* Beauty Lane Phils., Inc., G.R. No. 214186, Aug. 3, 2016) p. 464

CIVIL LIABILITY

Award of — In rape cases, the award of civil indemnity is mandatory upon proof of the commission of rape, whereas moral damages are automatically awarded without the need to prove mental and physical suffering and that exemplary damages are also imposed, as example for the public good and to protect minors from all forms of sexual abuse. (People *vs.* Bolo *y* Maldo, G.R. No. 217024, Aug. 15, 2016) p. 905

Civil liability ex delicto — While an act considered criminal is a breach of law against the State, our legal system allows for the recovery of civil damages where there is a private person injured by a criminal act; it is in recognition of this dual nature of a criminal act that our Revised Penal Code provides that every person criminally liable is also civilly liable; this is the concept of civil liability *ex delicto.* (Dy *vs.* People, G.R. No. 189081, Aug. 10, 2016) p. 672

name; and (2) the proposed name is either: (a) identical; or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law. (*Id.*)

— To determine the existence of confusing similarity in corporate names, the test is whether the similarity is such as to mislead a person, using ordinary care and discrimination. (*Id.*)

COURT EMPLOYEES

Simple misconduct — Punishable under Sec. 52 (B)(2) of the Revised Uniform Rules on Administrative Cases in the Civil Service with suspension for one (1) month and one (1) day to six (6) months. (Office of the Court Administrator *vs.* Espejo, A.M. No. P-16-3418 [Formerly A.M. No. P-12-3-46-RTC], Aug. 8, 2016) p. 551

COURTS

Equity — Court is barred by its own often repeated admonition that equity, which has been aptly described as justice outside legality, is applied only in the absence of and never against statutory law or judicial rules of procedure. (Metropolitan Bank & Trust Co. *vs.* Tan, G.R. No. 202176, Aug. 1, 2016) p. 70

CRIMINAL PROCEDURE

Civil liability arising from the offense — The extinction of the criminal action does not necessarily result in the extinction of the corresponding civil action; the latter may only be extinguished when there is a finding in a final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist; a civil action filed for the purpose of enforcing civil liability *ex delicto*, even if mandatorily instituted with the corresponding criminal action, survives an acquittal when it is based on the presence of reasonable doubt; in these instances while the evidence presented does not establish the fact of the crime with moral certainty,

effectively recommend such managerial actions; the second class consists of cashiers, auditors, property custodians, and the like who, in the normal and routine exercises of their functions, regularly handle significant amounts of money or property. (Torrefiel *vs.* Beauty Lane Phils., Inc., G.R. No. 214186, Aug. 3, 2016) p. 464

EMPLOYMENT, TERMINATION OF

Due process requirement — Two (2) written notices are required before termination of employment can be legally effected, namely: (1) the notice which apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the subsequent notice which informs the employee of the employer's decision to dismiss him; the failure to inform an employee of the charges against him deprives him of due process. (Torrefiel *vs.* Beauty Lane Phils., Inc., G.R. No. 214186, Aug. 3, 2016) p. 464

Illegal dismissal — An illegally dismissed employee is entitled to: (*a*) reinstatement (or separation pay, if reinstatement is not viable); and (*b*) payment of full backwages; the Court cannot sustain the award of separation pay in lieu of respondent's reinstatement on the bare allegation of the existence of "strained relations" between him and the petitioner. (Holcim Phils., Inc. *vs.* Obra, G.R. No. 220998, Aug. 8, 2016) p. 594

— The employer must prove by substantial evidence the facts and incidents upon which the accusations are made; unsubstantiated suspicions, accusations, and conclusions of the employer are not enough to justify an employee's dismissal. (Torrefiel *vs.* Beauty Lane Phils., Inc., G.R. No. 214186, Aug. 3, 2016) p. 464

Just causes — Employer has the inherent right to discipline, including that of dismissing its employees for just causes; this right is, however, subject to reasonable regulation by the State in the exercise of its police power; the finding that an employee violated company rules and regulations is subject to scrutiny by the Court to determine if the dismissal is justified and, if so, whether the penalty

ESTAFA

Civil liability in estafa cases — Whenever the elements of *estafa* are not established and that the delivery of any personal property was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case; this is because the civil liability arising from the contract is not civil liability *ex delicto*, which arises from the same act or omission constituting the crime. (Dy *vs.* People, G.R. No. 189081, Aug. 10, 2016) p. 672

Commission of — By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property; in this kind of *estafa*, the fraud which the law considers as criminal is the act of misappropriation or conversion. (Dy *vs.* People, G.R. No. 189081, Aug. 10, 2016) p. 672

— Elements of *estafa* are: (1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. (*Id.*)

EVIDENCE

Presentation of — The accused was deemed to have waived her right to present defense evidence following her and counsel's repeated absences; such waiver was deemed made after it was determined that the accused was afforded ample opportunity to present evidence in her defense but failed to give the case the serious attention it deserved. (Dela Cruz *vs.* People, G.R. No. 163494, Aug. 3, 2016) p. 214

Notarial seal — By affixing the notarial seal on the instrument, the deed of absolute sale is converted, from a private document into a public document; as a consequence, respondent, in effect, proclaimed to the world that: (1) all the parties therein personally appeared before her; (2) they are all personally known to her; (3) they were the same persons who executed the instrument; (4) she inquired into the voluntariness of execution of the instrument; and (5) they acknowledged personally before her that they voluntarily and freely executed the same. (Baysac *vs.* Atty. Aceron-Papa, A.C. No. 10231, Aug. 10, 2016) p. 635

OBLIGATIONS

Default — There is delay or default from the time the obligee judicially or extra judicially demands from the obligor the fulfillment of his or her obligation. (Buenaventura *vs.* Metropolitan Bank and Trust Co., G.R. No. 167082, Aug. 3, 2016) p. 237

Novation — Done either by changing the object or principal conditions, by substituting the person of the debtor, or by subrogating a third person in the rights of the creditor; requisites must be met for novation to take place: (1) there must be a previous valid obligation; (2) there must be an agreement of the parties concerned to a new contract; (3) there must be the extinguishment of the old contract; and (4) there must be the validity of the new contract. (Ever Electrical Mfg., Inc. *vs.* Phil. Bank of Communications (PBCOM), G.R. Nos. 187822-23, Aug. 3, 2016) p. 311

— It must be established that the old and new contracts are incompatible on all points, or that the will to novate appear by express agreement of the parties or acts of equivalent import; in the absence of an express provision, a contract may still be considered notated impliedly if it passes the test of incompatibility, that is, whether the contracts can stand together, each one having an independent existence. (*Id.*)

REAL ESTATE MORTGAGE LAW (ACT NO. 3135)

Extrajudicial foreclosure sale — A creditor is not precluded from recovering any unpaid balance on the principal obligation if the extrajudicial foreclosure sale of the property subject of the real estate mortgage results in a deficiency; in deference to the rule that a mortgage is simply a security and cannot be considered payment of an outstanding obligation, the creditor is not barred from recovering the deficiency even if it bought the mortgaged property at the extrajudicial foreclosure sale at a lower price than its market value notwithstanding the fact that said value is more than or equal to the total amount of the debtor's obligation. (Metropolitan Bank & Trust Co. *vs.* Tan, G.R. No. 202176, Aug. 1, 2016) p. 70

— There is no rule nor any guideline prescribing the minimum amount of bid, nor that the bid should be at least equal to the properties' current appraised value; what the law only provides are the requirements, procedure, venue and the mortgagor's right to redeem the property; unlike in an ordinary sale, inadequacy of the price at a forced sale is immaterial and does not nullify a sale since, in a forced sale, a low price is more beneficial to the mortgage debtor for it makes redemption of the property easier. (*Id.*)

REALTY INSTALLMENT BUYER PROTECTION ACT (R.A. NO. 6552)

Application of — The rights of the buyer in the event he defaults in the payment of the succeeding installments depend upon whether he has paid at least two (2) years of installments or less; Sec. 4 of R.A. No. 6552 that applies herein; the said provision provides for three (3) requisites before the seller may actually cancel the subject contract: *first*, the seller shall give the buyer a sixty (60)-day grace period to be reckoned from the date the installment became due; *second*, the seller must give the buyer a notice of cancellation/demand for rescission by notarial act if the buyer fails to pay the installments

(4) on occasion of the robbery or by reason thereof, the crime of homicide, which is used in a generic sense, was committed. (*Id*.)

RULES OF PROCEDURE

Application of — Cases should be determined on the merits after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. (Alburo *vs.* People, G.R. No. 196289, Aug. 15, 2016) p. 876

SALES

Contract of — A person who deliberately ignores a significant fact that could create suspicion in an otherwise reasonable person is not an innocent purchaser for value. (PNB *vs.* Vila, G.R. No. 213241, Aug. 1, 2016) p. 86

— In a contract of sale, the title to the property passes to the vendee upon the delivery of the thing sold whereas in a contract to sell, the ownership is, by agreement, retained by the vendor and is not to pass to the vendee until full payment of the purchase price; in a contract of sale, the vendee's non-payment of the price is a negative resolutely condition, while in a contract to sell, the vendee's full payment of the price is a positive suspense condition to the coming into effect of the agreement. (Danan *vs.* Sps. Serrano, G.R. No. 195072, Aug. 1, 2016) p. 37

SECURITIES AND EXCHANGE COMMISSION

Powers — SEC has absolute jurisdiction, supervision and control over all corporations; it is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporation involved, but more so for the protection of the public; it has the authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion. (Indian Chamber of Commerce Phils., Inc. *vs.* Filipino Indian Chamber of Commerce in the Phils., Inc., G.R. No. 184008, Aug. 3, 2016) p. 277

TAX EXEMPTION UNDER PAGCOR'S CHARTER (P.D. NO. 1869)

Application of — The PAGCOR Charter states in unequivocal terms that exemptions granted for earnings derived from the operations conducted under the franchise specifically from the payment of any tax, income or otherwise, as well as any form of charges, fees or levies, shall inure to the benefit of and extend to corporation(s), association(s), agency(ies), or individual(s) with whom the PAGCOR or operator has any contractual relationship in connection with the operations of the casino(s) authorized to be conducted under this Franchise, so it must be that all contracts and licensees of PAGCOR, upon payment of the 5% franchise tax, shall likewise be exempted from all other taxes, including corporate income tax realized from the operation of casinos. (Bloomberry Resorts and Hotels, Inc. *vs.* BIR, G.R. No. 212530, Aug. 10, 2016) p. 751

TAXATION

RP-US Tax Treaty — Under Art. 11 (5) of the RP-US Tax Treaty, the term "dividends" should be understood according to the taxation law of the State in which the corporation making the distribution is a resident, which pertains to respondent, a resident of the Philippines. (Commissioner of Internal Revenue *vs.* Goodyear Phils., Inc., G.R. No. 216130, Aug. 3, 2016) p. 484

Tax liabilities of the National Grid Corporation of the Philippines — Section 9 of R.A. No. 9511 provides that NGCP shall pay a franchise tax equivalent to three percent (3%) of all gross receipts derived by the Grantee from its operation under this franchise; this franchise tax is in lieu of income tax and any and all taxes, duties, fees and charges of any kind, nature or description levied, established or collected by any authority whatsoever, local or national, on its franchise, rights, privileges, receipts, revenues and profits, and on properties used in connection with its franchise, from which taxes, duties

occurrence. (People *vs.* Ballacillo, G.R. No. 201106, Aug. 3, 2016) p. 404

— Minor inconsistency in the witness' testimony does not in any way affect his credibility, especially that there are other pieces of evidence that strongly corroborate his testimony like the finding of the medico-legal. (People *vs.* Balisong, G.R. No. 218086, Aug. 10, 2016) p. 837

— Since rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof. (People *vs.* Bolo *y* Maldo, G.R. No. 217024, Aug. 15, 2016) p. 905

— Testimonies of child-victims of rape are to be given full weight and credence; reason and experience dictate that a girl of tender years, who barely understands sex and sexuality, is unlikely to impute to any man a crime so serious as rape lest her claims are true. (People *vs.* Ausa, G.R. No. 209032, Aug. 3, 2016) p. 437

— Testimonies of rape victims who are young and immature deserve full credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subject to a public trial, if she was not motivated solely by the desire to obtain justice for the wrong committed against her; youth and immaturity are generally badges of truth. (People *vs.* Ballacillo, G.R. No. 201106, Aug. 3, 2016) p. 404

— Testimony regarding the exact date of the alleged rape subject of this case are inconsequential, immaterial, and cannot discredit her credibility as a witness; the date of the rape need not be precisely proved, considering that it is not a material element of the offense; it is sufficient that the Information alleges that the crime was committed on or about a specific date. (People *vs.* Tuboro *y* Rafael, G.R. No. 220023, Aug. 8, 2016) p. 580

— Where there is no evidence that the witnesses of the prosecution were actuated by ill motive, it is presumed that they were not so actuated and their testimony is entitled to full faith and credit. (People *vs.* Libre *alias* "Nonoy," G.R. No. 192790, Aug. 1, 2016) p. 12

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